
Categorical Use Attainability Analysis for Recreation

Response to Comments for Comment Period Ending September 16, 2015

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1.0 SUMMARY

The State of Wyoming currently has two designations for recreational use of surface waters, primary contact recreation and secondary contact recreation. In addition, Wyoming also has a summer recreation season (May 1 through September 30) and a winter recreation season (October 1 through April 30). Primary contact recreation waters are those where recreational activities are expected to result in full body immersion in the water (e.g., swimming, water skiing, etc.,) or a level of contact with the water equivalent to swimming (i.e., activities of similar duration, intensity, and exposure to the water as swimming) during the summer recreation season. Secondary contact recreation waters are those where recreational activities are not expected to result in full body immersion in the water or a level of contact with the water equivalent to swimming (e.g., wading, fishing, hunting, etc.). During the winter recreation season (October 1 through April 30), waters designated for primary contact recreation are protected for secondary contact recreation.

Water quality criteria establish levels of pollutants necessary to support designated uses and are used in development of point source discharge permits; to evaluate whether water quality standards are met (303(d) List of Impaired Waters); and to establish goals for restoration plans such as total maximum daily loads (TMDLs). Current water quality criteria to protect primary and secondary contact recreation are based on geometric mean concentrations of *Escherichia coli* (*E. coli*), an indicator of waterborne pathogens intended to protect swimmers from gastrointestinal illnesses. The criteria are risk-based and derived from United States Environmental Protection Agency recommended criteria.

As the third driest and least populous state in the U.S., Wyoming has thousands of miles of ephemeral, small intermittent, and small perennial streams and ditches that do not have sufficient water to support full body immersion or a level of contact equivalent to swimming during the summer recreation season. Designating these waters for primary contact recreation results in unattainable expectations for those surface waters, unnecessarily stringent water quality criteria, and significant costs to both public and private entities to maintain and restore water quality to levels which do not correspond to the recreational uses and/or risk associated with people recreating in those waters.

After receiving many requests to change the designated use of surface waters from primary to secondary contact recreation, the Wyoming Department of Environmental Quality, Water Quality Division (WDEQ/WQD) determined that a statewide analysis would be the most effective and efficient method to determine the existing and attainable recreational uses of surface waters in Wyoming. Federal regulations and Wyoming's Surface Water Quality Standards require that the state conduct a scientific assessment of the factors affecting the attainment of the use (i.e., use attainability analysis) in order to designate waters for secondary contact recreation. WDEQ/WQD's analysis, the *Categorical Use Attainability Analysis for Recreation* (Categorical UAA) used Geographic Information Systems (GIS), 871 field verification sites, and public feedback to determine which ephemeral, small intermittent, and small perennial streams and ditches do not have sufficient flow to support full body immersion and are unlikely to be used for water play by small children with a level of contact with the water equivalent to swimming during the summer recreation season. Lakes, reservoirs, ponds, and other still water bodies were not addressed in the Categorical UAA.

The Categorical UAA identified low flow channels (ephemeral, small intermittent, and small perennial streams and ditches) with insufficient flow to support full body immersion as those flowlines within the 1:100,000 National Hydrography Dataset (NHD) with estimated mean annual flows (including flow from point source discharges) less than 6 cubic feet per second (cfs). These flowlines were designated for secondary contact recreation unless they occurred in areas easily accessible by small children (i.e., near populated places, schools, parks, accessible recreation sites, etc.). These low flow channels have a higher likelihood of being used for primary contact recreation because small children are more likely to have a level of contact with the water

equivalent to swimming in accessible low flow channels. Isolated flowlines identified for secondary contact recreation adjacent to primary contact recreation flowlines were changed to primary contact recreation to avoid short, isolated reaches. The results were validated with 151 field surveys conducted by WDEQ/WQD and 720 field surveys conducted by Wyoming's Conservation Districts.

Public feedback on the Categorical UAA was obtained during an August 6, 2013 to September 30, 2013 written comment period, an August 22, 2013 public meeting, and a January 28, 2014 to March 14, 2014 written comment period. WDEQ/WQD analyzed and responded to all of the comments received during these comment periods and revised the Categorical UAA as necessary. On August 20, 2014, the Water Quality Administrator approved the designated use changes from primary contact recreation to secondary contact recreation of the ephemeral, small intermittent, and small perennial streams and ditches identified in the Categorical UAA dated August 2014.

At the request of EPA, WDEQ/WQD accepted written comments for a third time between July 31, 2015 and September 16, 2015 and took both written and verbal testimony at a public hearing on September 16, 2015 in Casper, Wyoming. This document provides responses to written comments received by WDEQ/WQD during the July 31, 2015 to September 16, 2015 written comment period and verbal comments received at the public hearing held in Casper, Wyoming on September 16, 2015.

The full text of comments received during the comment period can be found in Appendix A (written comments from individuals), Appendix B (written comments received from organizations), Appendix C (transcript of the September 16, 2015 hearing), and Appendix D (comments received after the September 16, 2015 deadline). Although many comments touched on multiple themes, WDEQ has categorized comments by topic to assist in organizing both the responses and comments. WDEQ has provided responses to comments with similar themes in summary responses below. Responses to specific comments received prior to the September 16, 2015 deadline are included after each comment, however, WDEQ encourages commenters to review the full summary response text for responses that may address comments with more than one topic. Commenters highlighted in gray were provided in testimony to WDEQ at the September 16, 2015 hearing in Casper, Wyoming. Comments which were received both in writing and at the hearing are represented once in the comment document.

The Categorical UAA has been revised based on the responses below to help improve and clarify the intent and scope of the analysis. The main changes to the Categorical UAA include the withdrawal of all Class 1 waters from the analysis; withdrawal of waters in Indian Country from the analysis; and the retention of primary contact recreation uses on approximately four miles of congressionally designated Wild and Scenic Rivers. WDEQ/WQD is also committed to working with commenters that submitted incomplete site-specific information to modify recreational designated use where appropriate.

WDEQ has issued a revised Categorical UAA dated September 2016 and a Final Administrator's Determination. The decision is considered a final action of the Administrator of the Water Quality Division and may be appealed within 60 days to the Wyoming Environmental Quality Council pursuant to Section 16 of Wyoming DEQ's Rules and Practice and Procedure and Section 34(a) of Chapter 1 the Water Quality Rules and Regulations. The Categorical UAA, the Final Administrator's Determination, and this Response to Comments will be submitted to EPA for review and approval pursuant to the federal Clean Water Act.

WDEQ/WQD would like to thank all the individuals and organizations who provided written and verbal comments for their interest and involvement in surface water quality issues. Public engagement is an integral part of surface water quality standards development. WDEQ/WQD will continue to work with interested stakeholders to ensure that designated uses are reflective of existing and attainable uses.

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3.0 SUMMARY RESPONSES

3.1 Background

Section 101(a)(2) of the Clean Water Act identifies a national goal that wherever attainable, water quality which provides for recreation in and on the water. In circumstances where swimmable uses (i.e., primary contact recreation) are not attainable or existing uses, states can modify the recreational use by conducting a structured scientific assessment of the factors affecting the attainment of the use, called a use attainability analysis (UAA). Factors may include physical, chemical, biological, and economic considerations (40 CFR § 131.3(g)).

In 2001, all surface waters in Wyoming were designated for “full body contact recreation” (WDEQ 2001). Wyoming’s criteria to protect “full body contact recreation” were derived from EPA’s 1976 recommended criteria and consisted of a geometric mean¹ concentrations of fecal coliforms. Fecal coliforms were used as indicators of fecal contamination with the underlying premise that waterborne pathogens (e.g., viruses, bacteria, parasites, protozoa, etc.) that cause gastrointestinal illnesses (nausea, diarrhea, and vomiting) in swimmers are more likely to occur in surface waters with fecal contamination (EPA 1976).

In 2007, Wyoming’s Surface Water Quality Standards were revised to include “primary contact recreation” as the designated use rather than “full body contact recreation;” added a summer recreation season (May 1 through September 30) during which the primary contact criteria apply; and added water quality criteria for secondary contact recreation. Numeric water quality criteria for recreational uses were also revised from geometric mean concentrations of fecal coliforms to geometric mean concentrations of *E. coli* based on EPA’s Ambient Water Quality Criteria for Bacteria - 1986 (EPA 1986). The recommended indicator organism was changed from fecal coliforms to *E. coli* because studies evaluating the relationship between indicator organisms (i.e., *E. coli*, enterococci, and fecal coliforms) and gastrointestinal illness rates in swimmers showed no correlation between illness rates in swimmers and concentrations of fecal coliforms (Dufour 1984; EPA 1986). Most strains of *E. coli* are harmless (CDC 2016); indicator organisms such as *E. coli* are used to infer that pathogens that cause gastrointestinal illnesses in swimmers may be present.

Also in 2007, “all waters not specifically listed in Table A of the Wyoming Surface Water Classification List” were designated for secondary contact recreation. EPA disapproved these secondary contact recreation designations because the designations had been made without conducting a use attainability analysis. As outlined in federal regulations, 40 CFR § 131.10(g), “States may designate a use, or remove a use that is not an existing use, if the State conducts a use attainability analysis...” “...that demonstrates that the use is not feasible because of one of the six factors...” EPA outlined that in order to resolve the disapproval, “the State would need to delete the language in Section 27(a)” and “for waters where the State believes further review of the appropriate recreation use is warranted, the best option would be to utilize the Wyoming DEQ’s Recreational Use Designations Use Attainability Analysis (UAA) Worksheet on a site-specific basis...” or “another option...would be to work with the Region to develop a categorical UAA” (EPA 2008).

After receiving many site-specific UAAs and recognizing the overwhelming public interest in appropriately designating recreational uses and applying water quality criteria to waters of the state, WDEQ/WQD determined that a statewide categorical UAA would be the most effective and efficient method to identify primary and secondary contact recreational uses for surface waters in Wyoming. In 2009, WDEQ/WQD began

¹ A geometric mean is the nth root of the product of n numbers. A geometric mean is used to determine the central tendency of a group of numbers that can vary widely and dampens the effect of very high or very low values that would bias an arithmetic mean.

compiling datasets that could be used for the UAA. In 2010, WDEQ/WQD and Wyoming's Conservation Districts conducted field visits and completed surveys at 871 sites to validate the UAA.

WDEQ/WQD coordinated with EPA Region 8 throughout the conception and development of the Categorical UAA. EPA provided input on early versions of WDEQ/WQD's approach and staff accompanied WDEQ/WQD during some field visits to complete surveys in July 2010. In February 2012, WDEQ/WQD submitted a preliminary draft of the Categorical UAA to EPA Region 8 for feedback. In a May 2012 comment letter, EPA Region 8 outlined that their main concern with the draft Categorical UAA was the lack of connection to the use removal factors identified in Chapter 1, Section 33(b) and the Federal Regulations 40 CFR § 131.10(g). To address EPA's concerns, WDEQ/WQD developed an approach to identify waters that do not support primary contact recreation based on factor 2, (Chapter 1, Section 33(b)(ii) and 40 CFR § 131.10(g)(2)), the low flow factor. WDEQ/WQD used estimated mean annual flow data to identify ephemeral, small intermittent and small perennial streams and ditches that lack sufficient flow to support full body immersion and submitted an *Identification of Low Flow Streams* analysis to EPA in October 2012. EPA provided feedback in January 2013 indicating that their "preliminary thinking is that WDEQ/WQD's draft approach for identifying streams with insufficient flow to support primary contact recreation, with some modification, would be consistent with 40 CFR § 131.10(g)(2)."

WDEQ/WQD considered EPA Region 8 feedback on both the February 2012 Draft Categorical UAA and the *Identification of Low Flow Streams* analysis and released the Draft Categorical UAA for public comment on August 6, 2013. The Categorical UAA identified low flow channels (ephemeral, small intermittent, and small perennial streams and ditches) with insufficient flow to support full body immersion as those flowlines within the 1:100,000 National Hydrography Dataset (NHD) with estimated mean annual flows less than 6 cubic feet per second (cfs). These flowlines were designated for secondary contact recreation unless they occurred in areas easily accessible by small children (i.e., near populated places, schools, parks, accessible recreation sites, etc.) since small children are more likely to use these channels for child's play with contact with the water equivalent to swimming. Isolated flowlines designated for secondary contact recreation that were adjacent to segments designated for primary contact recreation were changed to primary contact recreation to avoid short, isolated reaches. The August 2013 public notice outlined that the state needed assistance from the public to identify streams in Wyoming that are used for primary contact recreation that were not identified as primary in the draft UAA. The public notice specifically identified areas such as pools or other deep water areas that may occur on low flow streams that may be used for primary contact recreation. The public notice also requested assistance in identifying any potential issues with the datasets used in the draft UAA.

During the August 6, 2013 to September 30, 2013 comment period, WDEQ/WQD did not receive any comments indicating that there were pools or other deep water areas on "low flow" channels used for primary contact recreation. WDEQ/WQD did receive comments indicating that the access datasets were designating too many dry draws and gullies for primary contact recreation that were not used for, nor have the potential to be used for, primary contact recreation (see Categorical UAA Response to Comments for Comment Period Ending September 30, 2013 for the full text of the comments and responses). Based on these and other comments received during the August 6, 2013 through September 30, 2013 public comment period, WDEQ/WQD released a revised Categorical UAA for a 45-day public comment period on January 28, 2014. Minor changes were made to the UAA (see Categorical UAA Response to Comments for Comment Period Ending March 14, 2014 for the full text of comments and responses) and on August 20, 2014, the Water Quality Division Administrator issued a final determination designating ephemeral, small intermittent and small perennial streams and ditches not located near populated areas, schools, or accessible recreation sites identified in the August 2014 Categorical UAA for secondary contact recreation.

WDEQ/WQD submitted the revised recreation designations to EPA in December 2015. Although EPA had not previously required that WDEQ/WQD hold a hearing on changes to designated uses, following a June 2015 request from EPA that described “EPA views the statute and regulations as requiring states to hold public hearings for any change to water quality standards, including any change to a designated use,” WDEQ/WQD provided notice and held a public hearing on September 16, 2015, in Casper, Wyoming. In addition, WDEQ/WQD accepted written comments on the Categorical UAA for a third time during this period.

3.2 Class 1 Waters

Some commenters expressed concern that WDEQ/WQD applied the Categorical UAA to Class 1 waters.

As outlined in the Water Quality Rules and Regulations, Class 1 waters are waters specifically designated by the Environmental Quality Council considering “water quality, aesthetic, scenic, recreational, ecological, agricultural, botanical, zoological, municipal, industrial, historical, geological, cultural, archaeological, fish and wildlife, the presence of significant quantities of developable water and other values of present and future benefit to the people.” Identified in Chapter 1, Appendix A, Class 1 waters include all surface waters located within the boundaries of national parks and congressionally designated wilderness areas as of January 1, 1999 (See Chapter 1, Appendix A for full list of Class 1 waters).

As described in Chapter 1, Section 4(a), Class 1, Outstanding Waters “...the water quality and physical and biological integrity which existed on the water at the time of designation will be maintained and protected.” Application of the Categorical UAA to Class 1 waters did not change any of the protections afforded Class 1 waters. However, to avoid confusion, WDEQ/WQD has withdrawn Class 1 waters from the analysis. The Categorical UAA and the web map have been updated to reflect this change. There are approximately 8,059 miles of Class 1 flowlines within the 1:100,000 National Hydrography Dataset that have been withdrawn from the analysis.

3.3 Waters in Indian Country

Some commenters expressed concern that WDEQ/WQD applied the Categorical UAA to waters located on the Wind River Indian Reservation. As outlined in the *Categorical UAA for Recreation* dated August 2014, “EPA or authorized tribes administer the Clean Water Act in Indian Country, as defined as 18 U.S.C. Section 1151.” Due to potential differences in what lands are considered “Indian Country,” WDEQ/WQD included only the written disclaimer within the August 2014 version of the *Categorical UAA for Recreation* and did not distinguish which waters were or were not located in Indian Country on the web map. To avoid confusion, WDEQ/WQD has withdrawn waters located within “Indian Country” from the *Categorical UAA for Recreation*. The UAA and the web map have been updated to reflect this change. There are approximately 3,172 miles of flowlines within the 1:100,000 National Hydrography Dataset located within Indian Country.

3.4 Rationale for Modifying Recreational Designated Uses

Some commenters questioned WDEQ/WQD’s motivation for designating waters for secondary contact recreation through the Categorical UAA. Other commenters described the importance of appropriately designating uses and applying water quality criteria to surface waters.

WDEQ/WQD initiated the Categorical UAA in response to many requests to change the designated use of waters from primary contact recreation to secondary contact recreation. Between 2007 and 2010, WDEQ/WQD received requests from the South Goshen, Lingle-Fort Laramie, North Platte Valley, Hot Springs,

Washakie County, Lower Wind River, and Popo Agie Conservation Districts to designate hundreds of miles of streams for secondary contact recreation. In addition to these UAA submissions, WDEQ/WQD was notified that many more site-specific UAAs would be forth coming. WDEQ/WQD has limited staff and resources to process hundreds of site-specific UAAs and therefore, in 2009, began working on what resulted in the Categorical UAA. The Categorical UAA was determined to be the best way to maximize the resources of the state, to develop an approach that would consistently designate recreational uses on surface waters in Wyoming, and reduce the number of site-specific UAAs that would need to be processed.

Requests to modify recreational designated uses were made so that designated uses and applicable water quality criteria more closely matched how surface waters are actually used and could potentially be used in order to ensure that resources are used appropriately to restore and protect surface water quality.

Surface water quality standards, specifically designated uses and criteria to protect designated uses, establish acceptable levels of pollutants for surface waters to ensure that uses are met. Pollutant levels are used to: establish permit limits for point source discharges, determine whether waters are meeting their designated uses, and set restoration targets when pollutant levels need to be reduced. Waters found to not meet their designated uses are identified on Wyoming's 303(d) List of Impaired Waters and are scheduled for Total Maximum Daily Load (TMDL) development. TMDLs evaluate the contribution of pollutants from both point sources and nonpoint sources and establish a plan to meet water quality standards through pollutant reductions.

Developing TMDLs is resource intensive and costly for both DEQ and stakeholders. Each TMDL requires extensive public participation, monitoring of surface waters, estimation of the loading capacity of the water, evaluation of pollutant loading from all sources, analysis of the current pollutant loads, determination of needed reductions, and an allocation of the allowable pollutant load among the different pollutant sources in a manner that ensures water quality standards are achieved. Upgrades to water treatment processes can be required and planning and implementation of potential best management practices requires significant involvement and commitments from local stakeholders.

Wyoming stakeholders are not unique in wanting to appropriately designate recreational uses on surface waters. A 2006 study by Meyerhoff et al. reviewed how each state designates recreational uses and how criteria to protect those uses are applied. The study highlighted that the TMDL process has increased interest in ensuring that recreational use designations are applied correctly. The review cites a survey of state regulators that found that "nearly half of all 303(d) Listings may not have been necessary if there had been a quick and cost-effective way to revise water quality standards to more accurately reflect the true use potential of waterbodies." The review also identifies that no two states have implemented bacterial standards using the same approach and that the EPA has approved a multitude of approaches, including some that are substantially different from the recommendations contained in federal guidance. Many states have waters designated primary and secondary contact recreation, similar to Wyoming's approach, while other states have additional recreational use designations, including waters with no protection for recreation (Meyerhoff et al. 2006).

Since point sources can be required to implement costly treatment technologies and nonpoint sources can be asked to reduce source loading through implementation of best management practices, there are high social and economic costs to inaccurately assigning designated uses and water quality criteria. Many of the stakeholders who actively participated during development of the Categorical UAA have been dealing with waters found to not meet their recreation designated use or manage point sources required to meet *E. coli* criteria. Many of these stakeholders recognize the significant costs associated with incorrectly assigned

designated uses and devoted considerable resources and effort during development of the Categorical UAA to ensure that DEQ produced a scientifically defensible and accurate UAA.

In designating waters for secondary contact recreation through the Categorical UAA, WDEQ/WQD was consistent with the federal Clean Water Act and implementing regulations since WDEQ/WQD only designated waters for secondary contact recreation where available information showed that swimmable uses are not existing or attainable uses.

3.5 Recreational Designated Uses and Water Quality Criteria

Some commenters expressed concerns with the waters WDEQ/WQD designated for secondary contact recreation in the Categorical UAA and that some of the waters WDEQ/WQD designated for secondary contact recreation were used for drinking, wading, cleaning dishes, cooling off, and other similar uses. Some commenters also expressed concern that *E. coli* in surface waters would make them sick. Other commenters noted that water quality criteria for primary contact recreation are based on protecting waters for swimming; the criteria are risk-based; *E. coli* is a pathogen indicator; and that pathogens are much more likely to occur in areas with higher levels of human wastes.

Primary contact recreation is a somewhat confusing term and can mean different things to different people. For this reason, WDEQ/WQD has attempted to clarify the primary and secondary contact recreation designated uses and the criteria used to protect waters for primary and secondary contact recreation. Since the designated use of primary contact recreation is maintained and restored using water quality criteria, WDEQ/WQD has relied heavily on the studies upon which the primary contact recreation criteria were derived in order to appropriately apply the designated use and water quality criteria to Wyoming's surface waters.

EPA's recommended water quality criteria for primary contact recreation are based on studies that evaluate the relationship between water quality and illnesses in *swimmers*. The recommended criteria are risk-based and have been defined as "a quantifiable relationship between the density of the indicator in the water and the potential human health risks involved in the water's use" (Cabelli 1981 cited in Dufour 1984). The relationships are used "to determine not what the risk is but what the water quality should be after an acceptable risk level has been agreed upon by a local or state authority" (Dufour 1984).

1976 Recreation Criteria

EPA's 1976 Quality Criteria recommended fecal coliform concentrations to define "swimming quality" and were based on the "incidence of illness observed among swimmers" who used freshwater beaches at Lake Michigan in Chicago, Illinois and the Ohio River in Dayton, Kentucky (EPA 1976). These recommended criteria were based on a risk level of approximately 8 gastrointestinal illnesses per 1,000 swimmers (EPA 1986).

Fecal coliforms were used as indicators of fecal contamination, with the underlying premise that waterborne pathogens (e.g., viruses, bacteria, parasites, protozoa, etc.) that cause gastrointestinal illnesses (nausea, diarrhea, and vomiting) in swimmers are more likely to occur in surface waters with fecal contamination (EPA 1976). Pathogen indicators, rather than the pathogens themselves, are used as recommended water quality criteria due to the diversity of potential pathogens present in surface waters.

Wyoming used EPA's 1976 recommended geometric mean concentrations of 200 colony-forming units (CFUs) of fecal coliforms per 100 milliliters of water (CFU/100 mL) to protect Wyoming surface waters designated for "full body contact recreation" until 2007.

1986 Recreational Criteria

In 2007, Wyoming's Surface Water Quality Standards were revised to include "primary contact recreation" as the designated use rather than "full body contact recreation;" added a summer recreation season (May 1 through September 30) during which the primary contact criteria apply; and added water quality criteria for secondary contact recreation. Numeric water quality criteria for recreational uses were also revised from geometric mean concentrations of fecal coliforms to geometric mean concentrations of *E. coli* based on EPA's Ambient Water Quality Criteria for Bacteria - 1986 (EPA 1986).

EPA's Ambient Water Quality Criteria for Bacteria – 1986, Bacterial Ambient Water Quality for Marine and Fresh Recreational Waters were based on data obtained during a multi-year freshwater epidemiological research program conducted at freshwater beaches near Erie, Pennsylvania and Tulsa, Oklahoma between 1978 and 1982 (Dufour 1984; EPA 1986). The goals of these studies were to: "determine whether swimming in freshwater contaminated sewage effluents results in a higher rate of gastrointestinal illness in swimmers related to the rate observed in beach-going, non-swimming reference group" (Dufour 1984); "determine which bacterial indicator is best correlated to swimming-associated health effects;" and define a "quantitative relationship between the water quality indicator and a swimming-associated health effect" (EPA 1986).

Swimming in these studies was "rigidly defined as having all upper body orifices exposed to the water" with interviewers "instructed to observe the individuals they were interviewing for signs of complete body immersion such as wet hair." Also noted in the study, "beach goers at freshwater beaches have a tendency to go into the water for extended periods and to immerse their bodies totally in the water" (Dufour 1984).

EPA's 1986 criteria recommended a change in fecal indicator from fecal coliforms to *E. coli* and/or enterococci because the epidemiological studies showed no correlation between gastrointestinal illness rates in swimmers and concentrations of fecal coliforms (Dufour 1984; EPA 1986). Similar to fecal coliforms, indicator organisms such as *E. coli* or enterococci are used to infer that pathogens that cause gastrointestinal illnesses in swimmers may be present. Most strains of *E. coli* are harmless (CDC 2016).

Wyoming's current criteria to protect primary contact recreation are based on EPA's 1986 recommended water quality criteria of a geometric mean of 126 CFU/100 mL *E. coli* (EPA 1986). EPA's 1986 recommended water quality criteria retained the same illness rate as the 1976 criteria, approximately 8 illnesses per 1,000 swimmers, therefore Wyoming's primary contact recreation criteria of a 60-day geometric mean of 126 CFU/100 mL *E. coli* correspond to a potential illness rate of 8 per 1,000 swimmers. The secondary contact recreation criteria of a 60-day geometric mean of 630 CFU/100 mL *E. coli* are derived from the same studies as the primary contact recreation criteria and correspond to a potential illness rate of 15 per 1,000 swimmers² (i.e., 0.8% of swimmers for primary contact recreation versus 1.5% of swimmers for secondary contact recreation). Secondary contact recreation is an appropriate level of protection for Wyoming's low flow channels where swimming or similar water contact activities are not attainable or existing uses because the exposure potential to waterborne pathogens is substantially reduced.

2012 Recreational Criteria

The study design used during development of EPA's 1986 criteria was also the basis for EPA's 2012 Recreational Water Quality Criteria. In the 2012 document, EPA defines primary contact recreation as

² Illness rates based on EPA's 1986 recreation criteria. EPA's 2012 recommended criteria re-defined gastrointestinal illness; under the revised definition, illness rates for Wyoming's primary and secondary contact criteria correspond to 36 per 1,000 swimmers and 68 per 1,000 swimmers, respectively.

“typically includes activities where immersion **and** ingestion are likely **and** there is a high degree of bodily contact with the water, such as swimming, bathing, surfing, water skiing, tubing, skin diving, water play by children, or similar water-contact activities” (EPA 2012). EPA’s 2012 recreation criteria also describes that “an important goal of the CWA [Clean Water Act] is to protect and restore waters for swimming”. WDEQ/WQD will be evaluating EPA’s 2012 Recreational Water Quality Criteria for inclusion during the next revision of Wyoming’s Surface Water Quality Standards.

Summer and Winter Recreational Seasons

For waters designated for primary contact recreation, water quality criteria to protect primary contact recreation activities apply during the summer recreation season and water quality criteria to protect secondary contact recreation activities apply during the winter recreation season. For waters designated for secondary contact recreation, water quality criteria protective of secondary contact recreation apply year round.

The summer and winter recreation seasons were adopted to recognize that low ambient air and water temperatures in Wyoming during the winter recreation season (October 1 through April 30) make swimming and similar water contact activities unlikely. As noted in EPA’s approval of Wyoming’s 2007 seasonal recreational uses, “seasonal uses recognize the practical reality that wintertime conditions are not conducive to primary contact recreation activities and provide for appropriate levels of protection” (EPA 2008). EPA’s water quality standards handbook provide the example that “in many northern areas, body contact recreation is possible only a few months out of the year. Several states have adopted primary contact recreational uses, and the associated microbiological criteria, for only those months when primary contact recreation actually occurs, and have relied on less stringent secondary contact recreation criteria to protect for incidental exposure in the ‘non-swimming’ season” (EPA 1994).

Primary Contact Recreation

Based on EPA’s recommended water quality criteria for primary contact recreational waters, the design of the studies upon which the criteria are based, primary contact waters are generally considered to be **waters that are used for or can be used for swimming or similar water contact activities (i.e., waters where contact with the water is equivalent to swimming, or activities of similar duration, intensity, and exposure to the water as swimming) during the summer recreation season**. Surface waters that are not used for or capable of supporting swimming or where contact with the water is not equivalent to swimming during the summer recreation season are more appropriately designated for secondary contact recreation.

Other Surface Water Uses

Use of surface waters as a water supply, for activities such as showering; cooking; cleaning pots, pans and eating utensils; brushing teeth; rinsing clothes; and drinking water are not considered recreational uses. In addition, there should be no expectation that untreated water supplies, from any surface water source, are safe for human consumption. This is true regardless of a water’s designation for primary or secondary contact recreation. Treatment of raw water is highly recommended to backcountry travelers by the Centers for Disease Control, land management agencies, and national recreation organizations.

For example, the Centers for Disease Control has produced guidance for [Drinking Water Treatment and Sanitation for Backcountry and Travel Use](http://www.cdc.gov/healthywater/drinking/travel/backcountry_water_treatment.html).³ The document serves as a guide for “individuals intending to use untreated or poorly treated water as a drinking source.” The document describes how to protect yourself from

³ http://www.cdc.gov/healthywater/drinking/travel/backcountry_water_treatment.html

pathogens such as the protozoans *Cryptosporidium* and *Giardia intestinalis*; bacteria such as *Campylobacter*, *Salmonella*, *Shigella*, and *E. coli*; as well as viruses such as enterovirus, hepatitis A, norovirus, and rotavirus by treating the water.

The United States Forest Service has issued guidance on [backpacking](#)⁴ that states “water from streams or lakes should be considered unsafe to drink until properly treated.” The Bureau of Land Management’s website on water sources along the [Continental Divide Scenic Trail](#)⁵ indicates that “It is highly recommended that all water be treated prior to use.”

The Categorical UAA did not simply identify waters that are not used for swimming or where contact with the water is not equivalent to swimming for secondary contact recreation; the UAA was designed to be much more conservative. First, the UAA identified those low flow channels that are unlikely to support full body immersion during the summer recreation season for secondary contact recreation. Secondly, the Categorical UAA only designated those low flow channels that are not easily accessible to small children for secondary contact recreation. Thirdly, WDEQ/WQD asked for input from the public to identify additional low flow channels that are used for primary contact recreation that were not captured by the UAA. And lastly, the designations made through the Categorical UAA can be reviewed since any person at any time may petition WDEQ/WQD to add or remove a designated use, as outlined in Chapter 1, Section 33.

3.6 Changes in Water Quality/Protection of Downstream Waters

Some commenters expressed concern that the Categorical UAA will result in degradation of water quality and that waters which were once safe for contact will no longer be. Some commenters also expressed concern that changing designated uses from primary contact to secondary contact recreation would result in degradation of downstream water quality. Other commenters noted that modifying a designated use does not result in changes to the water quality of those waters.

Wyoming’s current criteria to protect primary and secondary contact recreation are based on geometric mean concentrations of *E. coli*. *E. coli* are used as indicators of fecal contamination, with the underlying premise that waterborne pathogens (e.g., viruses, bacteria, fungi, etc.) that cause gastrointestinal illnesses in swimmers are more likely to occur in surface waters with fecal contamination.

Changing the recreational designated use from primary contact to secondary contact recreation changes the applicable water quality criteria during the summer recreation season (May 1 through September 30) from a 60-day geometric mean of 126 CFU/100 mL *E. coli* to a 60-day geometric mean of 630 CFU/100 mL *E. coli* (WDEQ/WQD 2013a).

Geometric mean concentrations of *E. coli* are used to establish effluent limits for point source discharges; determine whether waters are meeting their recreation designated uses during development of Wyoming’s 303(d) List of Impaired Waters; and to set targets for restoration plans such as TMDLs. As a result, in most circumstances, changing the designated use of a water from primary contact to secondary contact recreation will not increase the concentration of *E. coli* in the water or the sources of *E. coli* to surface waters.

Using another designated use may illustrate the impact of a designated use and applicable water quality better. WDEQ/WQD currently has cold water and warm water fisheries designated uses. Data and information may be presented to WDEQ/WQD to suggest that portions of streams were incorrectly designated for cold

⁴ <http://www.fs.fed.us/r2/recreation/camping/backpacking.pdf>

⁵ http://www.blm.gov/wy/st/en/programs/nlcs/Continental_Divide/watersrc.html

water fisheries and only support warm water fisheries. So that WDEQ/WQD can implement surface water quality standards appropriately, WDEQ/WQD may propose modifying aquatic life uses from cold water to warm water based on the existing and attainable use. Similar to changing recreational designated use from primary contact to secondary contact, water quality criteria (e.g., temperature) that applies to those waters would protect warm water aquatic life rather than cold water aquatic life. The water quality **criteria** of those streams would change, not the actual water quality.

Point Sources

The Categorical UAA has a minimal impact to waters with point source discharges. Of the approximately 105 facilities with *E. coli* effluent limits, approximately 13 occur on waters designated for secondary contact recreation through the Categorical UAA and may see an adjustment to their *E. coli* effluent limits. Relaxation of permits, however, are only permissible if requirements of antibacksliding are met. Approximately ten of the facilities discharge to receiving waters on private land and approximately three facilities discharge to receiving waters on public lands.

Protection of downstream designated uses and/or water quality are considered during permit development, in development of restoration plans such as TMDLs, and in antidegradation policies.

In circumstances where a facility discharges to a water designated for secondary contact recreation and there is reasonable potential for the effluent to impact the water quality of a downstream water designated for primary contact recreation, the permit will be written to protect the downstream designated use and/or water quality. Permit Regulations for Dischargers to Wyoming Surface Waters, Water Quality Rules and Regulations, Chapter 2, Section 5(c)(iii)(C)(I) states “Water quality based effluent limitations shall be established for constituents in discharges determined to have a reasonable potential of adversely impacting uses of surface waters of the state or of causing violations of water quality standards.”

Point source discharge permits for facilities discharging to secondary contact waters may also be revised to protect downstream water quality through development of waste load allocations in restoration plans such as TMDLs. In circumstances where the loading analysis demonstrates that a point source is a contributor to a downstream exceedance of water quality standards, the effluent limit would be revised to ensure that downstream water quality standards are met.

The *Antidegradation Implementation Policy* also addresses discharges to tributaries to Class 1 waters: “The department will impose whatever controls are necessary on regulated point source discharges to tributaries to Class 1 waters to the extent that the existing quality and uses of the downstream Class 1 segment will be protected and maintained. It is the department’s interpretation that ‘tributary’ means any waters feeding the mainstem and any upstream mainstem segments” (WDEQ/WQD 2013b).

Nonpoint Sources

For surface waters without point source discharges, a change in designated use from primary contact to secondary contact recreation changes the threshold at which WDEQ/WQD would identify a stream as not meeting its recreation designated use to be included on the 303(d) List of Impaired Waters and would change the restoration target for those waters. The change modifies the *E. coli* concentration at which regulatory action becomes necessary, but does not result in degradation or lower of existing water quality.

The typical process for identifying and addressing exceedances of water quality criteria is:

1. WDEQ/WQD or another entity collects water quality data;
2. WDEQ/WQD determines that water quality standards are exceeded;
3. WDEQ/WQD proposes the water for the 303(d) List of Impaired Waters;
4. The water is included on the 303(d) List of Impaired Waters;
5. WDEQ/WQD or another entity prepares a TMDL or restoration plan;
6. Stakeholders implement the TMDL or restoration plan.

None of these activities results in degradation of water quality. Furthermore, in circumstances where *E. coli* concentrations are less than either the primary or secondary contact recreation criteria, water quality standards are met regardless of the designated use and no action is required.

Similar to waters with point sources, in the case of nonpoint sources of *E. coli*, it is not necessary to retain a primary contact recreation use in order to protect downstream water quality. If a downstream water exceeds the applicable water quality criteria and is identified on Wyoming's 303(d) List of Impaired Waters, a restoration plan would address all the sources of that pollutant including those upstream of the impairment to meet water quality criteria. This process occurs regardless of whether the water adjacent to the source is designated for primary or secondary contact recreation.

Chapter 1, Section 7(c) specifically addresses nonpoint source discharges to **tributaries** to Class 1 waters. "Nonpoint source discharges of pollution to Class 1 waters or tributaries of Class 1 waters shall be controlled through application of best management practices... For Class 1 waters, best management practices will maintain existing quality and waters uses."

Drinking Water Supplies

Public drinking water supplies are regulated under the Safe Drinking Water Act. The National Primary Drinking Water Regulations identify levels of contaminants that apply to public water systems to protect public health. The maximum contaminant level for total coliforms, which includes *E. coli*, is fewer than 5% of samples test positive per month.⁶ Surface waters rarely meet this criteria, regardless of their designation for primary or secondary contact recreation. As a result, drinking water facilities will continue to treat water for compliance with the National Primary Drinking Water Regulations, regardless of the recreational designated use.

Safety

WDEQ/WQD compiles the 303(d) List of Impaired waters using all existing and readily available data that meet Wyoming's data requirements and quality assurance and quality control procedures (see Wyoming's Methods for Determining Surface Water Quality Condition and TMDL Prioritization). Because data has not been collected on all waters in the state, it should not be implied that because a water is not included on the 303(d) List that the water meets water quality standards.

Concentrations of waterborne pathogens and pathogen indicators are highly variable; waters that do not show elevated *E. coli* during one sampling period may show elevated concentrations the next. As a result, there are very few instances in which individuals can ensure that water quality is "safe" for a particular use. Only regular, routine monitoring can ensure that waters are safe for recreation. The presence of *E. coli* also only indicates that pathogens that cause gastrointestinal illnesses may be present. As such, WDEQ/WQD recommends that all individuals and organizations exercise caution when recreating in any surface water, regardless of its

⁶ <http://water.epa.gov/drink/contaminants/>

designation for primary or secondary contact recreation, unless the water is subject to regular, routine monitoring for pathogens, *E. coli*, or other pathogen indicators.

3.7 Maintaining Water Quality

Commenters identified a number of areas and/or waters in which they would like to retain the primary contact recreation use in order to maintain and/or protect existing water quality (see Table 1), either as a local or regional goal, or Congressional or resource management plan directive.

Table 1. Lands and/or waters where commenters would like to see water quality maintained.

Land/River Designation	Commenter
Areas of Critical Environmental Concern	National Outdoor Leadership School; Sierra Club
Forest Plan Eligible and Suitable Rivers	U.S. Forest Service
Forest Plan Recommended Wilderness Waters	U.S. Forest Service
Inventory Roadless Areas	National Outdoor Leadership School; Sierra Club
Lands with Wilderness Characteristics	National Outdoor Leadership School; Wyoming Outdoor Council
National River Inventory	Snake River Fund
Research Natural Areas	Sierra Club
Special Recreation Management Areas	National Outdoor Leadership School; Wyoming Outdoor Council
Wild and Scenic Rivers	Council for the Bighorn Range; U.S. Forest Service, Lisa McGee; NOLS Rocky Mountain; Rendezvous River Sports; Snake River Fund; Wyoming Outdoor Council; Wyoming Wilderness Association
Tributaries to Wild and Scenic Rivers	Council for the Bighorn Range; U.S. Forest Service; NOLS Rocky Mountain; Snake River Fund; Wyoming Outdoor Council
Tributaries to Wilderness Areas	Council for Bighorn Range; U.S. Forest Service
Candidate Wild and Scenic Rivers	NOLS Rocky Mountain; Snake River Fund
Wilderness Study Areas	NOLS Rocky Mountain; U.S. Forest Service; Sierra Club; Snake River Fund; The Wilderness Society
Waters in Teton County	Teton Conservation District

WDEQ/WQD considered all of these requests very carefully and recognizes that an important goal of the State, federal government, land management agencies, nonprofit organizations, and the public in general is to maintain the quality of surface waters. WDEQ/WQD also recognizes the equally important goal of designating recreational uses based on existing and attainable uses. Fortunately, the federal Clean Water Act and Wyoming's surface water quality standards contain antidegradation protections to maintain and protect existing water quality in circumstances where water quality is better than water quality criteria. These provisions allow the state to maintain existing water quality unless there are good reasons for lowering water quality. Antidegradation provisions therefore allow the state to designate uses where they are existing and attainable uses, while also protecting and maintaining water quality.

Section 2 of Wyoming's *Antidegradation Implementation Policy* identifies, "Water quality standards designate the uses which are protected on waters of the state and establish criteria that describe the maximum pollutant concentrations and other water quality conditions necessary to maintain those uses. Many waters in the state

have an existing level of water quality that is better than the criteria established to support designated uses. The **antidegradation** requirements are designed to maintain water quality at the higher levels unless there are good reasons for lowering water quality” (WDEQ/WQD 2013b).

Antidegradation, therefore, rather than designation of uses, is the appropriate mechanism to maintain water quality in circumstances where water quality is better than criteria used to protect designated uses. Wyoming’s Surface Water Quality Standards (Chapter 1, Sections 4, 7 and 8) and *Antidegradation Implementation Policy* describe Wyoming’s approach to maintain water quality. The policies identify three main “tiers” of antidegradation protections.

Tier 1 is the basic level of protection which applies to all waters. Existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected. These protections apply to Class 2D, 3 and 4 waters.

Tier 2 protections apply to high quality waters that generally have existing quality better than the established use-support criteria and where an assimilative capacity exists for parameters that would be affected by the proposed activity (e.g. a new point source discharge). Under tier 2, a lowering of water quality may be allowed if it is determined that the amount of degradation is insignificant or if the lower water quality is necessary to accommodate important economic or social development in the area. These protections apply to Class 2AB, 2A, 2B and 2C waters.

Tier 3 protections apply to waters that constitute “outstanding national resources waters” (functionally equivalent to Wyoming’s Class 1 waters). In Class 1 waters “the water quality and physical and biological integrity which existed on the water at the time of designation will be maintained and protected” (see Chapter 1, Section 4(a)). The water quality of Class 1 waters is maintained through limiting any new point source discharges and application of best management practices for nonpoint sources (see Chapter 1, Section 7). Class 1 waters currently include all waters in National Parks and congressionally designated wilderness areas as of January 1, 1999 (see Chapter 1, Appendix A for complete list of Class 1 waters). As noted above, in the Class 1 Waters Summary Response, Class 1 waters, including all waters in congressionally designated wilderness areas, have been withdrawn from the Categorical UAA.

In circumstances where the public or land management agencies would like to see water quality maintained in a manner above and beyond what is currently articulated in Wyoming’s antidegradation rules and policies (Chapter 1, Sections 4, 7 and 8, and the *Antidegradation Implementation Policy*), WDEQ/WQD recommends working with the department during the next revision of Wyoming’s Surface Water Quality Standards and Antidegradation Implementation Policy.

In addition, designation of waters for secondary contact recreation consistent with the federal Clean Water Act does not preclude individual Conservation Districts, land management agencies, or members of the public from working with stakeholders to manage water quality for primary contact recreation.

Wild and Scenic Rivers

Of the approximately 455 miles of congressionally designated Wild and Scenic Rivers in Wyoming, seven miles were designated for secondary contact recreation through the Categorical UAA. Approximately three of the seven miles are Class 1 waters have been withdrawn from the analysis. For the remaining four miles of congressionally designated Wild and Scenic Rivers, WDEQ/WQD revised the Categorical UAA to retain the primary contact recreation use. As a result, all congressionally designated Wild and Scenic Rivers will continue to be designated for primary contact recreation or as Class 1 waters.

It is important to note that additional antidegradation protections may be necessary to maintain the existing water quality of congressionally designated Wild and Scenic Rivers in circumstances where water quality is better than the primary contact recreation criteria since all Wild and Scenic Rivers are not currently designated as Class 1. Another potential option would be for the Forest Service and WDEQ/WQD to develop a cooperative agreement that outlines specific actions both the Forest and the State will do to maintain water quality of Wild and Scenic Rivers. This approach would be consistent with Section 10(e) of the Wild and Scenic Rivers Act, “The Federal agency charged with the administration of any component of the national wild and scenic rivers system may enter into written cooperative agreements with the Governor of a State, the head of any State agency, or the appropriate official of a political subdivision of a State for State or local governmental participation in the administration of the component.” Cooperative agreements would also be an option for other waters in which resource management plans describe that water quality should be maintained and protected.

3.8 Approach for Identifying Waters for Secondary Contact

Commenters both agreed and disagreed with the WDEQ/WQD’s approach for designating waters for secondary contact recreation based on the data and information WDEQ/WQD used to develop the Categorical UAA. Some commenters expressed concern that WDEQ/WQD asked the public for locations that they use for primary contact recreation, while others felt this was a reasonable request. Many commenters noted the amount of time, money, and effort expended to field verify the Categorical UAA and that the field verification was highly accurate.

The federal Clean Water Act implementing regulations for water quality standards (40 CFR § 131) identifies the following purpose: “A water quality standard defines the water quality goals of a water body, or portion thereof, by designating the use or uses to be made of the water and by setting criteria that protect the designated uses. States adopt water quality standards to protect public health or welfare, enhance the quality of water and serve the purposes of the Clean Water Act (the Act). ‘Serve the purposes of the Act’ (as defined in sections 101(a)(2) and 303(c) of the Act) means that water quality should, **wherever attainable**, provide water quality for the protection and propagation of fish, shellfish and wildlife and for recreation in and on the water and take into consideration their use and value for public water supplies, propagation of fish, shellfish, and wildlife, recreation in and on the water, and agricultural, industrial, and other purposes including navigation.”

The Categorical UAA has retained swimmable uses where available information showed that swimmable uses are attainable consistent with the federal Clean Water Act and implementing regulations. In addition, the Categorical UAA was not limited to those waters that are not used for swimming. WDEQ/WQD’s designations for secondary contact recreation are based on identifying those low flow channels that are unlikely to be used for swimming or support full body immersion that are also unlikely to be used for child’s play based on proximity to populated places, schools and accessible recreation sites.

WDEQ/WQD’s Categorical UAA demonstrates that primary contact recreation (e.g., swimming, contact with the water equivalent to swimming) is not an attainable or existing use on low flow channels not located in areas easily accessible by small children. The Categorical UAA evaluates: water availability (low flow conditions – factor 2), outlined in Chapter 1, Section 33(b)(ii) and 40 CFR § 131.10(g)(2); access, mentioned in Wyoming’s Use Attainability Analysis Implementation Policy (WDEQ/WQD 2013b) and EPA guidance documents (EPA 1992; EPA 2004); and whether primary contact recreation is an existing use, as outlined in Chapter 1, Section 33(b) and 40 CFR § 131.10(g).

WDEQ/WQD worked collaboratively with EPA during conception, development, and revision of the Categorical UAA to ensure consistency with the federal Clean Water Act and implementing regulations. To this end, EPA

provided input on early versions of WDEQ/WQD's approach and staff accompanied WDEQ/WQD during some field visits to complete surveys in July 2010. WDEQ/WQD also submitted two preliminary drafts of the analysis to EPA prior to initiating the formal public comment process. EPA's comments, including their most recent letter to WDEQ/WQD dated June 3, 2015 stated, "The EPA acknowledges the five years of work on the UAA by WDEQ and appreciates the significant effort WDEQ has made to address the EPA's comments... [T]he EPA reviewed the scientific basis of the UAA and continues to support WDEQ's approach for identifying streams with insufficient flow to justify the designation of a secondary contact recreation use consistent with 40 CFR § 131.10(g)(2)."

Estimated Mean Annual Flow

Per EPA's recommendation, the Categorical UAA relied on UAA factor 2, the low flow factor, "natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the use" to demonstrate that primary contact recreation was not an attainable use. The UAA used the Enhanced Unit Runoff Method (EROM) modeled mean annual flow data available in the National Hydrography Dataset Plus (NHDPlus) Version 2 (V2) to identify ephemeral, small intermittent, and small perennial streams and ditches that do not have sufficient flow during the summer recreation season to support full body immersion.

NHDPlus is a geospatial, hydrologic framework dataset built by the United States EPA Office of Water, assisted by the United States Geological Survey (USGS)⁷. The EROM modeled mean annual stream flow were available for all networked flowlines (channel segments) in NHDPlus V2 (McKay et al. 2013). The EROM mean annual flow data is based on a flow balance model and represents average conditions. The flow balance approach takes precipitation, potential evapotranspiration (PET), evapotranspiration (ET), and soil moisture storage into account. PET and ET calculations include air temperature. Mean annual flow values were calibrated and validated with USGS gage data.

This approach was based on EPA guidance "whether any portions of the segment ever provide sufficient flow and/or depth for total body immersion (in a prone position)" (EPA 1994) and recreation UAAs conducted in other states that relied on factor 2 to evaluate flow during base flow conditions (e.g., MDNR 2007). Base flow conditions were defined in the State of Missouri's Recreation UAA protocol, for example, as "the portion of a stream flow contributed by sources of water other than precipitation runoff. This refers to fair weather flow sustained primarily by springs or groundwater seepage, wastewater discharges, irrigation return flows, releases from reservoirs, or some combination of these sources."

The estimated mean annual flow threshold of 6 cfs is therefore not intended to represent all possible flow conditions present in a particular channel, but to identify those low flow channels that are unlikely to be used for swimming or similar water contact activities because they lack sufficient flow and/or depth to support full body immersion during the summer recreation season. WDEQ/WQD's analysis indicates that a modeled mean annual flow of 6 cfs is an appropriate threshold for identifying ephemeral, small intermittent, and small perennial streams and ditches that are unlikely to have sufficient flow to support full body immersion during the summer recreation season. In addition, WDEQ/WQD was not provided with any detailed site-specific information during the multiple comment periods that indicate that a modeled mean annual flow of 6 cfs is not an appropriate threshold for identifying channels that are unlikely to have sufficient flow and/or depth to support full body immersion during the summer recreation season. As identified in the Categorical UAA, WDEQ/WQD also recognizes that the designations may not perfectly align on every stream in the State. WDEQ/WQD will continue to work with interested stakeholders to identify additional channels, on a site-specific basis, where primary contact recreation is an attainable or existing use.

⁷ <http://www.horizon-systems.com/nhdplus/>

Buffer Distances

The buffer distances used in the Categorical UAA were used to exclude those ephemeral, small intermittent, and small perennial streams and ditches with the greatest likelihood of being used for water play by small children with contact with the water equivalent to swimming based on the proximity of the low flow channel to populated places, schools, and accessible recreation sites. Low flow channels that are in close proximity to high density housing areas, schools, and accessible recreation sites are more likely to be used for child's play during the summer recreation season, where contact with the water could potentially be at a level equivalent to swimming, than other low flow channels. The buffer distances selected in the Categorical UAA are appropriate for this purpose.

Furthermore, as outlined in the *Categorical UAA*, the UAA used the best available information to identify waters where swimming or similar water contact activities (i.e., primary contact recreation) were not existing or attainable uses. However, because the *Categorical UAA* was developed at a state-wide scale, WDEQ/WQD recognizes that the designations may not perfectly align on every stream in the State. WDEQ/WQD will work with interested stakeholders to identify additional channels, on a site-specific basis, where primary contact recreation is an attainable or existing use.

Surveys

The Categorical UAA was validated using 871 surveys conducted by WDEQ/WQD and Conservation Districts. The survey sites visited by Conservation Districts were randomly generated, while the survey sites visited by WDEQ/WQD were predominately on USFS lands. The surveys were not intended to represent every possible flow condition or recreational use of stream channels, but to represent various surface water conditions and recreational potential to determine how well the UAA performed at identifying waters where primary contact recreation is not an existing or attainable use.

The Categorical UAA dated August 2014 did incorrectly state that the Conservation District surveys were conducted in the "fall of 2010". The actual dates the surveys were conducted were from June 28, 2010 to November 3, 2010. Of the 720 surveys, 666 (93%) were completed during the summer recreation season. Another 42 (6%) were completed during the first week in October. The incorrect text within the Categorical UAA has been corrected.

Because the survey sites visited by Conservation Districts were randomly generated, the surveys were conducted at sites with a range of modeled flow conditions (see Table 2 below) and at sites that are not publicly accessible as well as sites that are publicly accessible.

In addition to representing various flow conditions, the surveys also indicate that the modeled mean annual flow threshold of 6 cfs is appropriate for identifying waters within insufficient flow to support full body immersion (i.e., represented by questions four and five in the Conservation District Surveys). Question four, "Is the survey location on a water that is a larger perennial stream or game fishery known to be used by sportsmen or other recreationists?" Question five, "Is the survey location either currently known to be or do you believe that it has a reasonable potential to be used for recreational activities such as fishing, swimming, floating, rafting, canoeing, or kayaking?" Of the approximately 424 surveys conducted on sites with mean annual flows less than 6 cfs that were not lakes, there was 97% agreement with Question 4 and 96% agreement with Question 5.

Table 2. Miles of NHD flowlines and locations of conservation district surveys by NHDPlus V2 modeled mean annual flows.

	NHD Flowlines		Surveys	
	Miles	Percent	Number	Percent
No Flow	10,210	9%	74	11%
> 0 and < 1 cfs	64,281	56%	223	32%
≥ 1 and < 2 cfs	8,678	8%	49	7%
≥ 2 and < 3 cfs	4,551	4%	27	4%
≥ 3 and < 4 cfs	2,900	3%	26	4%
≥ 4 and < 5 cfs	2,254	2%	23	3%
≥ 5 and < 6 cfs	1,685	1%	14	2%
≥ 6 cfs	21,009	18%	264	38%
Total	115,569	100%	700	100%

The percentage of surveys conducted on lands of various ownership and/or land management also represented the proportion of lands ownership/management in Wyoming very well. For example, Conservation Districts surveyed approximately 310 sites on lands managed by the Bureau of Land Management (BLM) and Forest Service (approximately 43% of the surveys completed). Within Wyoming, BLM and Forest Service lands represent approximately 42% of the land area. Conservation Districts surveyed approximately 334 sites on private land (44% of the surveys) and approximately 46% of the land area in Wyoming is private. Conservation Districts surveyed approximately 46 sites (6% of the surveys) on state land and approximately 6% of the land area in Wyoming is state land.

WDEQ/WQD survey sites were selected to focus on public lands and recreational areas, with a disproportionate amount of sites surveyed on USFS lands. Of the 151 sites surveyed by WDEQ/WQD, 75 of those sites (50%) were conducted on USFS lands, although only 14% of the land area in Wyoming is managed by USFS.

The surveys demonstrate that the Categorical UAA performs very well at identifying waters where primary contact recreation is not an existing or attainable use. As noted in the UAA, the UAA performed very well in identifying waters where the surveys identified characteristics that indicate that primary contact recreation may be an existing or attainable use. The results from the surveys also indicate that the Categorical UAA designated more waters for primary contact recreation than indicated by a site-specific survey (i.e., the Categorical UAA is more conservative than a site-specific analysis would be).

Public Input

WDEQ/WQD relied heavily on EPA during development of the Categorical UAA to ensure that the UAA was consistent with the federal Clean Water Act, implementing regulations, and EPA guidance. WDEQ/WQD's Categorical UAA used the best available information to demonstrate that primary contact recreation is not an attainable or existing use on waters identified for secondary contact in the Categorical UAA. The results of the UAA were validated with 871 site-specific surveys. The surveys demonstrate that the UAA performs very well at identifying waters where primary contact recreation is not an existing or attainable use and that the Categorical UAA retained primary contact recreational uses on far more waters than indicated by site-specific surveys.

WDEQ/WQD has also repeatedly solicited feedback from the public to identify any additional areas they use for primary contact recreation that were not captured by the analysis.

The August 2013 public notice stated “WDEQ/WQD is requesting assistance from the public to identify areas within Wyoming that are used for primary contact recreation that are not currently identified as primary in the draft UAA. The department is particularly interested in locations such as pools or other deep water areas that may support primary contact recreation that are currently not identified as primary in the UAA. WDEQ/WQD is also interested in identifying any potential issues with the datasets used in development of the UAA.”

The July 2015 public notice stated “The public is invited to provide oral and written comments and/or documentation regarding the existing and potential recreation activities on streams designated for secondary contact recreation as described in the Categorical UAA. Documentation should be sufficient for WDEQ/WQD to confirm whether primary contact recreation is an existing or attainable use, or not, on a particular stream. Such information may include photographs, flow data, and other information at the level of detail described in the worksheets contained in Appendix C of the Categorical UAA. Modification of a surface water designation established in the Categorical UAA will require the presentation of information sufficient to identify: (1) the location of stream (e.g., latitude and longitude, object ID provided in the web map, etc.) and (2) the existing and potential recreational activities associated with the stream, given the physical condition of the stream.”

Language in the July 2015 public notice was modeled on language provided by EPA in their June 3, 2015 letter to WDEQ/WQD, which stated “As a general matter, the EPA expects that the burden of proof to rebut the presumption for uses specified in CWA § 101(a)(2) remains with the state. However, the EPA does consider it reasonable for Wyoming to expect the public to assist in providing information sufficient to identify: (1) the location of the stream (e.g., latitude and longitude, object ID provided in the web map, road mile marker); and (2) existing or potential recreational activities in the context of the physical condition of the stream. Public commenters may provide any number of pieces of information, and such information could come from user testimony during the hearing, user written comments, photos, flow data, or data from the UAA worksheet in Appendix C of the UAA.”

WDEQ/WQD also considers it reasonable for members of the public to identify specific locations that they use for swimming or similar water contact activities since this is a very specific use of surface waters that results in a high degree of contact with the water.

WDEQ/WQD’s analysis indicates that the modeled mean annual flow of 6 cfs and proximity to populated places, schools, and recreation sites are appropriate parameters to identify channels unlikely to have sufficient flow and/or depth to support full body immersion and a level of contact with the water equivalent to swimming during summer recreation season in Wyoming. This analysis was corroborated by the 871 site-specific surveys that were conducted as well as the many opportunities for public comment. Throughout the various opportunities for public comment (i.e., three written comment periods, a public meeting, a public hearing), WDEQ/WQD was not provided with any detailed site-specific information indicating that WDEQ/WQD’s approach to designating waters for secondary contact is inaccurate. The lack of site-specific information helps confirm that WDEQ/WQD’s approach is reasonable, scientifically defensible, and a much more accurate reflection of attainable and existing recreational uses of Wyoming’s low flow channels. The Categorical UAA has therefore appropriately identified low flow channels where swimming or similar water contact activities are not attainable or existing uses. WDEQ/WQD will continue to work with interested stakeholders on site-specific basis to identify any ephemeral, small intermittent, or small perennial streams or ditches that are used for or can be used for swimming or where contact with the water is equivalent to swimming during the summer recreation season. Members of the public can also petition the department at any time to modify designated uses, as outlined in Chapter 1, Section 33.

3.9 Public Process

Some commenters suggested that public outreach efforts were insufficient; requested that WDEQ/WQD withdraw the Categorical UAA; that WDEQ/WQD provide additional opportunities for public participation, either through extension of the comment period or through holding additional hearings; and that WDEQ/WQD accept electronic comments. Other commenters noted that there has been sufficient public participation, and that there is a process by which members of the public can work with WDEQ/WQD to modify designated uses on a site-specific basis.

Process to Modify Designated Uses

In 2001, the authority to modify designated uses, with public notice and opportunity for comment, was given to the Water Quality Administrator when Wyoming revised and EPA approved (2002) revisions to Wyoming's Surface Water Quality Standards (see Chapter 1, Water Quality Rules and Regulations, Sections 4, 33 and 34 and Use Attainability Analysis Implementation Policy). This process was adopted through WDEQ/WQD's formal rulemaking process, considering input from the public, recommendations of the Water and Waste Advisory Board, adoption by the Environmental Quality Council and approval by the Governor.

The process for modifying surface water classifications and/or designated uses includes development of the use attainability analysis, public notice with opportunity for comment, a final decision by the Water Quality Administrator, and opportunity to appeal the Administrator's determination to the Environmental Quality Council. Changes to designated uses are then submitted to EPA for approval. This process has been largely unchanged since 2001 and has been utilized by WDEQ/WQD to modify the designated uses of dozens of surface waters. EPA has acted on at least 31 of these UAAs in approximately seven separate actions.

Categorical UAA Public Process

Due to the high public interest in appropriately designating recreational uses on Wyoming streams, WDEQ/WQD began working in 2009 on what resulted in the *Categorical UAA*. WDEQ/WQD worked with and/or obtained data from Conservation Districts, United States Forest Service, Wyoming Department of Transportation, Wyoming State Parks, Bureau of Land Management, Wyoming Game and Fish Department, United States Environmental Protection Agency (USEPA) and numerous other entities to develop the *Categorical UAA*.

As early as September 2011, WDEQ/WQD identified the statewide recreation UAA project in surface water quality standards outreach documents that were circulated during the revision of Chapter 1 of the Water Quality Rules and Regulations, Wyoming's Surface Water Quality Standards. The Categorical UAA was also noted in Response to Comments for site-specific recreation UAAs that were completed on approximately 11 streams in Goshen County in 2010 and 2011 (see Response to Comments for Bear Creek, Cottonwood Creek, Muskrat Creek, Red Cloud Slough, Cherry Creek, Dater Creek, Fox Creek, Jay Em Creek, Little Cottonwood Creek, Negro Baby Creek, and Sage Creek).

The formal public comment period for the *Categorical UAA* began with a public notice that was sent to WDEQ/WQD's Water Quality General Info and Rulemaking list-serve on August 6, 2013, and was published in the Casper Star Tribune as a display ad on August 8, 2013. This notice was also posted on WDEQ/WQD's surface water quality standards webpage and the WQD's Current Events page. As outlined in that public notice, WDEQ/WQD held a public meeting on the *Categorical UAA* in Cheyenne on August 26, 2013, and offered to hold additional public meetings upon request. In August and September of 2013, WDEQ/WQD staff

attended regional Conservation District meetings in Lyman, Greybull, Casper, Cheyenne, and Wright to discuss the *Categorical UAA*.

Public comments on the initial *Categorical UAA* proposal were accepted until September 30, 2013. WDEQ/WQD reviewed seventeen unique comments, developed a formal response to comments document, and made changes to the UAA based on the comments. The document entitled *Response to Comments for the Comment Period Ending September 30, 2013* and the revised UAA were released through a second public notice on January 28, 2014. The notice was sent to the WDEQ/WQD's Water Quality General Info and Rulemaking list-serve, and was again published in the Casper Star Tribune on January 28, 2014. The public notice and UAA information were also posted on the surface water quality standards webpage and the WQD's Current Events page.

Comments on the revised *Categorical UAA* were received until March 14, 2014. WDEQ/WQD received six unique comments, developed a formal response to comments document, and made minor changes to the UAA based on those comments. The final Administrator's determination was made on August 20, 2014. Commenters were notified that they could appeal the Administrator's determination to the Environmental Quality Council pursuant to Section 16 of Chapter 1 of Wyoming DEQ's Rules of Practice and Procedure, Wyoming Statute 35-11-112(a)(iii) and Section 34(1) of Chapter 1, Wyoming Water Quality Rules and Regulations.

Although EPA had not previously required WDEQ/WQD to hold a hearing on changes to designated uses, following a June 2015 request from EPA that described "EPA views the statute and regulations as requiring states to hold public hearings for any change to water quality standards, including any change to a designated use," WDEQ/WQD provided notice and held a public hearing on September 16, 2015, in Casper, Wyoming. In addition, WDEQ/WQD accepted written comments on the Categorical UAA for a third time during this period.

WDEQ/WQD's water quality standards identify that "public notice and opportunity for comment shall be provided prior to making" a determination. WDEQ/WQD's UAA Implementation Policy identifies that "the public notice shall provide a 45-day public review period." WDEQ/WQD's three written comment periods, public meeting, and public hearing have far exceeded the public participation requirements identified in Wyoming's Surface Water Quality Standards and Use Attainability Analysis Implementation Policy and that of previous UAAs completed by WDEQ/WQD.

Next Steps

WDEQ/WQD has very carefully considered requests to withdraw the Categorical UAA and requests for additional public participation.

Because (1) available information indicates that the Categorical UAA is an appropriate approach to identify low flow channels in Wyoming where swimming or similar water contact activities are not attainable or existing uses, (2) WDEQ/WQD has met and exceeded public participation requirements, (3) WDEQ/WQD has evaluated and addressed all comments received during the public participation process; and (4) EPA has expressed support for the approach, WDEQ/WQD lacks sufficient justification to withdraw and/or significantly modify the Categorical UAA at this time. After more than 7 years of development and scientific analysis, WDEQ/WQD believes it will be more efficient and a better use of resources to work with interested stakeholders on a site-specific basis to further modify recreational designated uses as necessary.

The designations resulting from the Categorical UAA are a much more accurate reflection of existing and attainable recreational uses in Wyoming's low flow channels and the UAA has served the intended purpose of

reducing the number of site-specific UAAs that will be to be completed. As outlined in the *Categorical UAA*, the UAA used the best available information to identify waters where swimming or similar water contact activities (i.e., primary contact recreation) are not existing or attainable uses. However, because the *Categorical UAA* was developed at a state-wide scale, WDEQ/WQD recognizes that the designations may not perfectly align on every stream in the State.

WDEQ/WQD is committed to appropriately designating uses on surface waters in the State and will continue to work collaboratively with interested stakeholders to ensure that designated recreational uses are reflective of existing and attainable uses. WDEQ/WQD believes that the site-specific approach will ensure that WDEQ/WQD receives the information necessary to modify designated uses where appropriate. Any person at any time can also petition the department to modify a designated use on any surface water, as outlined in Chapter 1, Section 33.

The three written comment periods, public meeting, and public hearing have met and exceeded the public participation requirements identified in state rules and polies for designated uses changes and met and exceeded the public participation process used for the 31 UAAs previously completed by WDEQ/WQD that have been acted on by EPA since 2001. The September 16, 2015 public hearing and third written comment period have also made the public participation process consistent with EPA's current view that their statutes and regulations require states to hold public hearings for changes to designated uses.

WDEQ/WQD also worked collaboratively with EPA during development of the Categorical UAA and EPA supports WDEQ/WQD's approach. EPA's most recent letter to WDEQ in June 2015 stated "The EPA acknowledges the five years of work on the UAA by WDEQ and appreciates the significant effort WDEQ has made to address the EPA's comments... [T]he EPA reviewed the scientific basis of the UAA and continues to support WDEQ's approach for identifying streams with insufficient flow to justify the designation of a secondary contact recreation use consistent with 40 CFR § 131.10(g)(2)."

WDEQ/WQD does not agree that it was necessary to withdraw the August 20, 2014 decision prior to accepting comments on the designated use changes. Comments received during the July 31, 2015 to September 16, 2015 written comment period and at the September 16, 2015 public hearing did result in changes to the UAA. The changes include withdrawal of Class 1 waters and waters in "Indian Country" from the analysis and retention of primary contact recreation on approximately four miles of congressionally designated Wild and Scenic Rivers. In addition, WDEQ/WQD is committed to working with commenters that submitted site-specific information to obtain the additional information necessary to modify recreational designated uses where appropriate.

Due to these changes, WDEQ/WQD has issued a revised Categorical UAA dated September 2016 and a Final Administrator's Determination. The decision is considered a final action of the Administrator of the Water Quality Division and may be appealed within 60 days to the Wyoming Environmental Quality Council pursuant to Section 16 of Wyoming DEQ's Rules and Practice and Procedure and Section 34(a) of Chapter 1 the Water Quality Rules and Regulations. The Categorical UAA, the Administrator's Determination, and this Response to Comments will be submitted to EPA for review and approval pursuant to the federal Clean Water Act.

Electronic Comments

In September 2015, WDEQ began accepting electronic comments for rule making and special projects. WDEQ first accepted electronic comments for the Solid and Hazardous Waste Division Chapter 1 and Chapter 2 rule revisions during September and October 2015. WDEQ anticipates accepting electronic comments on any

future rulemakings and changes to designated uses. WDEQ also plans to provide this service to all public comment opportunities, including permits, as capabilities are developed.

4.0 COMMENTS AND RESPONSES

4.1 Class 1 Waters

Andy Blair, Lander, WY: In Wilderness areas, I would suggest that all areas continue to be managed at Primary Contact for Recreation given the Class 1 designation for these areas. Under the Wilderness Act of 1964, grazing is permitted activity within Wilderness areas. Removing e. coli levels from the management tool box of these areas potentially compromises the ability of land managers to maintain their obligations under the Class 1 designation.

Department Response: See Class 1 Waters Summary Response.

Armond Acri, Jackson, WY: I would propose that a designation of secondary use not apply in wilderness areas as it is not consistent with the intent of the Wilderness Act. High levels of E. coli from commercial livestock operations are not consistent with the goals of managing wilderness. Streams in wilderness areas deserve higher levels of protection.

Department Response: See Class 1 Waters Summary Response.

Jonathan Ratner, Director, Western Watersheds Project: One other issue which was not raised directly in previous comments was the downgrading of Class I streams. DEQ's own policy states "Class 1 waters are specially designated waters on which the existing water quality is protected regardless of the uses supported by the water." Yet this was entirely ignored by the DEQ in its rush to service the livestock industry's needs.

Department Response: See Class 1 Waters Summary Response.

Dan Smitherman, Wilderness Society: We are particularly concerned that this sweeping reclassification is illegally downgrading Class 1 waters in designated wilderness and wilderness study areas.

The proposed action by DEQ would lower the standard and raise the permissible levels of E. coli to 500 percent above levels deemed safe for swimming in thousands of miles of Class 1 wilderness streams. This despite the fact that DEQ's own standards for Class 1 surface waters is no degradation, and no lowering of water quality.

The DEQ's own policies prohibit it from downgrading Class 1 waters based on a finding that primary contact recreation is not an existing or attainable use. "Class 1 waters are specially designated water on which the existing water quality is protected regardless of the uses supported by the water." Wyoming Surface Water Quality Standards, Implementation Policies for Antidegradation, Mixing Zones and Dilution Allowances, Turbidity UAA, (September 24, 2013.) Class 1 waters include all surface waters located in congressionally designated wilderness areas. See Appendix A, Wyoming Surface Water Classifications. Under DEQ's Antidegradation and UAA policies, the DEQ's Categorical UAA for

Recreation cannot be used to downgrade recreation-based water quality standards in wilderness areas.

Essentially, that DEQ has determined (based on its UAA) that swimming and other primary contact uses may not be an existing or attainable use on low flow streams in congressionally designated wilderness areas has no standing. That is because the DEQ's UAA policy for Class 1 waters prevents the lowering of water quality standards regardless of whether a use is existing or attainable. Under DEQ policies, existing water quality in Class 1 waters must be protected.

Wyoming is home to millions of acres of wilderness containing significant miles of streams and watersheds. These areas provide thousands of hours of public recreation annually including primary contact. These fact that DEQ is arbitrarily downgrading a significant portion of these waters to secondary contact and then expects the general public to provide evidence for reinstatement as primary contact is onerous. This approach essentially reverses the requirement of the Act, which provides a presumption that stream uses are attainable unless proven otherwise. Even an organization of our size with national resources would find it difficult to provide the level of detail DEQ expects from the general public.

In summary, TWS is asking that the DEQ withdraw its August 2014 decision reclassifying roughly 88,000 miles of streams in Wyoming. At the very minimum, the DEQ must reinstate primary contact recreation standards to all Class 1 waters in wilderness areas.

Department Response: See Class 1 Waters Summary Response.

Dan Heilig, Wyoming Outdoor Council: *Threshold Issue #5: The Water Quality Division's Implementation Policies forbid it from downgrading recreation-based water quality standards on Class 1 surface waters.*

Implementation policies for antidegradation *and* for use attainability analyses adopted by the WQD and approved by EPA prohibit the Administrator from downgrading Class 1 waters. According to the WQD's Implementation Policy (September 24, 2013), "[a]ntidegradation protection is one of the essential elements of state surface water quality standards programs and is required under Section 303(d)(4)(B) of the Clean Water Act." See Section 1, page 2. Wyoming's antidegradation policy reflects the three-tiered approach adopted by EPA, with Tier 3 providing the highest level of protection under the Clean Water Act. As described in Wyoming's policy, "Tier 3 protections apply to waters that constitute "outstanding national resource waters" (ONRWs). Tier 3 requires maintenance of existing quality with no consideration of assimilative capacity or economic or social development." See Antidegradation Policy at 3. "Though not designated as ONRWs, class 1 waters are afforded a level of antidegradation protection which is the functional equivalent of EPA's tier 3 concept." /

In addition to disregarding its antidegradation policies, the WQD's August 20, 2014 reclassification also conflicts with the WQD's policy for use attainability analyses, which provides: "*Class 1 waters are specially designated waters on which the existing water quality is protected regardless of the uses supported by the water.*" See UAA Implementation Policy at 25 (emphasis added). As stated above, the WQD's UAA Implementation Policy is unambiguously clear that water quality of Class 1 waters must be maintained regardless of whether primary contact recreation (or any other use) is an existing or attainable use. The fact that DEQ believes that swimming and other primary contact uses may not be an existing or attainable use on low flow streams in congressionally designated wilderness areas is irrelevant. The DEQ's UAA policy for Class 1 waters expressly prohibits the lowering of water quality

standards regardless of whether a use is existing or attainable. Under DEQ policies, existing water quality in Class 1 waters must be protected. Permitting more *E. coli* pollution by virtue of a use downgrade is not permitted.

The Administrator's attempt to downgrade pristine low flow streams within congressionally-designated wilderness areas to secondary contact recreation is an unprecedented assault on Class 1 water quality in Wyoming. This reclassification raises the permissible levels of *E. coli* 500 percent above levels deemed safe for swimming in thousands of miles of Class 1 wilderness streams. While the standard for Class 1 surface waters is no degradation, and no lowering of water quality – this rule authorizes levels of *E. coli* pollution 5 times higher than previously existing limits. Moreover, Class 1 waters are designated by the Environmental Quality Council in accordance with formal rulemaking procedures. See WQRR Chapter 1, Section 4(a). The Administrator's decision to downgrade Class 1 waters to allow for more pollution undermines the authority of the EQC, and defeats the intent of its Class 1 designations. The Administrator's August 20, 2014 reclassification of water quality standards runs afoul of his own policies and therefore must be withdrawn and amended to exclude Class 1 waters.

Department Response: See Class 1 Waters Summary Response.

Sarah Walker, Wyoming Wilderness Association: Thank you for accepting these comments on behalf of the Wyoming Wilderness Association regarding your August 20, 2014 decision to downgrade recreation-based water quality standards on 87,775 Wyoming stream miles based on a Categorical Use Attainability Analysis for Recreation (UAA).

Our organization is concerned that the decision to downgrade protections on such a large percentage and wide-variety of Wyoming surface waters over such a large geographic scope could only have been reached without conducted the site specific analysis or appropriate public outreach by the Clean Water Act and the Wyoming Environmental Quality Act. The Wyoming Wilderness Association is principally concerned with the downgraded of thousands of miles of Class 1 streams in designated wilderness, despite the fact that the very nature of that classification prohibits their degradation.

The Administrator's attempt to downgrade pristine low flow streams within congressionally-designated Wilderness areas is a unique assault on Class 1 water quality in Wyoming. This reclassification to secondary contact recreation raises the permissible levels of *E. coli* five times above levels deemed safe for swimming in thousands of miles of wilderness streams. This decision clearly conflicts with the WQD's policy for use attainability analyses, which provides: "*Class 1 waters are specially designated waters on which the existing water quality is protected regardless of the uses supported by the water.*" UAA Implementation Policy at 25, Wyoming Surface Water Quality Standards. The DEQ's own UAA Implementation Policy is clear that water quality of Class 1 waters, by nature of their status, must be maintained regardless of whether primary contact recreation (or any other use) is an existing or attainable use. The DEQ's UAA policy for Class 1 waters expressly prohibits the lowering of water quality standards regardless of whether DEQ deems a use existing or attainable. Moreover, Class 1 waters are designated by the Environmental Quality Council in accordance with formal rulemaking procedures. WQRR Chapter 1, Section 4(a). The Administrator's decision to downgrade Class 1 waters to allow for more pollution contradicts the authority of the EQC, and defeats the intent of its Class 1 designations

It is our understanding that, after inaccurately and illegally downgrading protections on the vast majority of Wyoming's surface water, the DEQ is now asking the public to provide evidence for

reinstating individual streams to primary contact status. We take issue with that process. It is not the public's burden to defend thousands of miles of individual wilderness streams in a 45 day window. It is the DEQ's responsibility to illustrate to the EPA that its downgrades are warranted. We do not see how the DEQ can defend a downgrade model so broad and shielded from public review that it went so far as to degrade Class 1 wilderness streams in direct violation of its own policy.

This error alone is telling of the inadequate public comment opportunity surrounding the decision. Surely if wilderness advocates, conservation organizations and outdoor recreation groups were aware of downgrades to Class 1 wilderness stream and eligible Wild and Scenic river segments, these issues would have been corrected through appropriate public input channels. In the same way, appropriate public outreach would have illustrated that many of the reclassified streams are indeed used recreationally for dunking, splashing, wading, soaking and for many, these pristine low-flow streams epitomize the Wyoming wilderness experience. Wyoming citizens have a passion for their public lands, our outstanding outdoor recreation opportunities, and they especially value their right to comment on decisions in their own backyard.

The Wyoming Wilderness Association requests that the DEQ/WQD withdraw its Categorical UAA for Recreation and August 20, 2014 decision and renew a transparent public process informed by accurate cite-specific information and citizen input. At the very minimum, the DEQ must reinstate primary contact status to all Class 1 wilderness waters. We look forward to staying up to date as the process evolves.

Department Response: See Class 1 Waters Summary Response.

Rob Davidson, Council for the Bighorn Range: We do feel idea that you are going to degrade wilderness waters. I'll just give you an example. In these secondary waters, they're kind of a Class A or Class -- you've got a grade A or a grade B water source. The application of these new standards would allow users to degrade these waters to the point where you just don't give them a pass with a C or a D. So this is why we oppose these standards, and I thank the Council for its time.

Department Response: See Class 1 Waters Summary Response.

4.2 Waters in Indian Country

Leslie Peterson, Wilson, WY: I'd like to defend the Wind River Indian Reservation too, but don't know the streams there. Also it seems that the Indians have their own capable defenders.

Department Response: See Waters in Indian Country Summary Response.

Dan Heilig, Wyoming Outdoor Council: *Tribal waters.* The DEQ's "designated uses web map" shows numerous surface waters within the exterior boundaries of the Wind River Reservation that appear to have been downgraded to secondary contact recreation. It is our understanding that the Tribes have designated their own water quality standards. We would appreciate clarification of this point.

Department Response: See Waters in Indian Country Summary Response.

4.3 Rationale for Modifying Recreational Designated Uses

Mara Gans, Lander, WY: I also object to your application of a standard that downgrades 76% of our state's streams instead of working to clean up the minority that may exceed the primary contact standard. You are addressing this problem (and the public doesn't know the extent of the problem even), by finding the lowest common denominator and changing the measure instead of working to assure the highest level of clean water for our future – which is the intent of the Clean Water Act.

Department Response: See **Rationale for Modifying Recreational Designated Uses Summary Response.**

Jennifer Hinkhouse, District Manager, Campbell County Conservation District: After the 2007 decision by the EPA to disapprove Wyoming Department of Environmental Quality (WDEQ's) proposed changes to Chapter 1, Water Quality Rules & Regulations, which resulted in all waterways being classified as primary recreational waters, regardless of whether the waterbody was used for recreational purposes. CCCD continued its monitoring program on the three streams listed on the WDEQ's 303 (d) list for E.coli impairment, and continued to look for ways to mitigate the impairment. One of the areas that was examined was whether or not any of the waterbodies in Campbell County were in need of a site specific Use Attainability Analysis. As CCCD commented in its previous letters Middle Prong of Wild Horse Creek, post Coal Bed Natural Gas (CBNG) production (2002-2006) has experienced minimal flow. Aside from storm events, the normal flow of this creek is below 5 cfs. This creek is predominately on private land with little to no access available to the general public. So in 2010 these factors were analyzed and CCCD initiated a site specific Use Attainability Analysis for Middle Prong of Wild Horse. However after work began on a statewide UAA those efforts were put on hold.

CCCD is committed to protecting and improving the water quality of the streams in Campbell County, for all users from recreational to agricultural. As such CCCD feels that the adoption of the UAA model will enable our district to focus staff time, funding and resources towards waterbodies that truly receive recreational use and pose a potential risk to human health.

Department Response: See **Rationale for Modifying Recreational Designated Uses Summary Response.**

Wayne Garman, Chairman, Crook County Natural Resource District: The CCNRD strongly supports the Categorical Recreational Use Attainability Analysis proposed and adopted by the Department of Environmental Quality and submitted to EPA on December 1, 2014. As concerned citizens, we understand the importance of assigning appropriate contact recreation classifications.

The Categorical UAA is a robust, defensible and appropriate method for designating recreational uses on Wyoming's surface waters. Under the current default of all waters being protected as "primary", absent the adoption and approval of the Categorical UAA, site specific UAA's would be required on 77,514 stream miles. This is an unnecessary burden on the state and local governments when a statistically defensible number of field verifications have validated the attainable recreational uses identified by the Categorical UAA.

As we move forward with meeting the goal of clean water, it is important that the standard that is applied reflect uses that are attainable, and in the case of primary and secondary contact recreation

activities, the inherent risks that exist. Resources, both financial and human, should be focused on waters where the risk to human health is elevated due to the increased potential for ingestion.

It is imperative that Wyoming's waters are accurately protected for the attainable recreational uses.

Department Response: See Rationale for Modifying Recreational Designated Uses Summary Response.

Don McDowell, Chair, Lingle-Fort Laramie Conservation District: The Lingle-Ft. Laramie Conservation District takes the responsibility of water issues very seriously and was one of the first to undertake reclassifying our waters through the UAA process. Our district submitted several site specific UAA's in 2010.

Department Response: See Rationale for Modifying Recreational Designated Uses Summary Response.

Terry Hayes, JW Hendry and Row Lucas, Lower Wind River Conservation District: The LWRCD has been involved with trying to get streams properly classified for recreation since 2009. Our biggest concern is that many dry draws and gullies are classified as primary recreation streams by default. Common sense dictates that these intermittent and ephemeral stream which only flow water during significant snow melt or rainstorms should not be included in a class for swimming and fishing. The categorical UAA, while not completely accurate, is much better than the primary designations that currently exist for all dry draws and gullies. Our tax dollars will be better spent working on water quality for streams that truly are primary recreation streams if this UAA is approved by EPA.

Department Response: See Rationale for Modifying Recreational Designated Uses Summary Response.

Ralph Brokaw, Chairman, Medicine Bow Conservation District: This model vastly reduces the amount of time and money that needs to be spent on site-specific use attainability analysis.

Department Response: See Rationale for Modifying Recreational Designated Uses Summary Response.

Lisa Ogden, District Manager, Natrona County Conservation District: This UAA is not meant at all to "downgrade" waterbodies. It is to designate our state's waterbodies appropriately so that available water funding can be spent on the waterbodies that truly are being utilized as primary contact waters to keep them within the confines of the Clean Water Act.

Department Response: See Rationale for Modifying Recreational Designated Uses Summary Response.

Kevin Gaukel, Chairman, Niobrara Conservation District: With all streams and draws listed as primary contact, without this Categorical UAA, it would require tremendous workload on both the DEQ and other entities to complete and process UAAs to properly designate streams for recreational use. The workload would take up valuable manpower, time and money that could be put towards many natural resource concerns.

Once the Categorical UAA is in place there will be streams and stream segments that require Site Specific UAA for proper recreational designation, either from primary to secondary or secondary to primary. With the final Categorical UAA showing an 80% agreement, over all, with the survey results we would expect that the number of streams requiring a Site Specific UAA for proper designation would be drastically reduced. This would certainly allow for a better allocation of human and financial resources in the area of natural resource protection.

Department Response: See Rationale for Modifying Recreational Designated Uses Summary Response.

Jack Berger, Chairman, Saratoga-Encampment-Rawlins Conservation District: We look forward to EPA's approval of Wyoming's Categorical Use Attainability Analysis for Contact Recreational use designations as submitted by the Wyoming Department of Environmental Quality and to continuing focused water quality work where recreational use is attainable to protect citizens who recreate in the waters of our District.

Department Response: See Rationale for Modifying Recreational Designated Uses Summary Response.

Scott Sims, Manager, Sims Cattle Company LLC: The vast majority of Wyoming streams do not lend themselves to "immersion, full body contact, or frequent use of the water by children" due to low flows and lack of ready accessibility.

Department Response: See Rationale for Modifying Recreational Designated Uses Summary Response.

George Kelso, Chairman, South Big Horn Conservation District: In years past our District has reviewed the stream classifications and been amazed at how inaccurate they were based on our local knowledge, a consequence of the current default of all waters being protected as "primary" in the absence of an individual UAA on each stream. All of the larger streams in our District were listed as impaired on the 303(d) list due to fecal coliform and we were struggling to set priorities to best work on these problems. Due to growing concerns about issues that could arise from mis-classification of stream, our District was about to launch an effort to file UAA's on possibly hundreds of streams and dry washes to get them properly classified so that we could better focus our BMP implementation efforts where they would do some good. This would have taken an enormous amount of time and cost, not to mention the workload it would have created for DEQ. We were very pleased to hear about the efforts to develop the Categorical UAA if it could improve on the accuracy of stream classifications over the default method. While we don't expect the Categorical UAA is 100% accurate, it allows us to review streams and identify a minority as being mis-classified instead of the majority being misclassified and the previous process is still in effect to submit individual UAA's. Using the Categorical UAA reduces the need for massive submissions of UAA's on streams, allowing conservation districts and DEQ to better focus their limited resources where they will do the most good.

It is imperative that Wyoming's waters are accurately protected for the attainable recreational and other uses.

Adoption will allow our District to allocate more time and resource to implementing efforts to protect waters within our District and improve their water quality where needed to meet their designated uses instead of focusing our efforts on paperwork which does nothing to put conservation on the ground.

Department Response: See Rationale for Modifying Recreational Designated Uses Summary Response.

Michael Henn, District Manager, Sublette County Conservation District: *It is imperative that Wyoming's waters are accurately protected for the attainable recreational uses.*

As WYDEQ, SCCD, and other move forward with meeting the goal of clean water, it is important that the standard that is applied reflect the uses that are attainable, or in the case of primary and secondary contact recreation activities, the inherent risks that exist. Resource, both financial and human, should be focused on water where the risk to human health is elevated due to the increased potential for ingestion. We have an obligation to ensure we are focusing our resources where contact recreation activities occur and a greater risk of ingesting quantities of water exists. It is irresponsible to do otherwise, however the current approach places both the SCCD and WYDEQ in that position.

Department Response: See Rationale for Modifying Recreational Designated Uses Summary Response.

Dan Rice, Chairman, Washakie County Conservation District: WCCD believes in ensuring that those waters capable of supporting primary and secondary contact recreation uses are accurately designated so that human health is protected. As we move forward with meeting the goal of clean water, it is important that the standard that applies, reflects the uses that are attainable.

We would appreciate EPA's approval of Wyoming's Categorical Use Attainability Analysis for designation of recreation uses to help Wyoming in focusing our water quality work on those priority recreational use waters.

Department Response: See Rationale for Modifying Recreational Designated Uses Summary Response.

Shaun Sims, President, Wyoming Association of Conservation Districts: After the EPA disapproved Wyoming DEQ's 2007 Chapter 1, Water Quality Rules & Regulations proposal for designating recreational waters as primary versus secondary utilizing a default approach whereby larger systems and waters would automatically be primary (Table A, Chapter 1) and smaller waters and unnamed tributaries would be designated secondary (Table B or unlisted waters, Chapter 1), the local conservation district's initiated discussion with DEQ on how to approach the task of accurately designating recreation uses on Wyoming's surface waters. Several districts began prioritizing waters within their districts for the completion of site specific recreational use UAA's given that all waters in the state defaulted back to primary, absent the UAA. As a result, discussions occurred with DEQ on the immense workload and expenditure of resources this would take. DEQ in turn took the initiative to utilize technology, combined with a set of criteria aimed at identifying areas and conditions conducive to primary recreation activities, supported with field verification process, while concurrently consulting with the US EPA, to create the proposed Categorical Use Attainability Analysis.

It is imperative that Wyoming's water are accurately protected for the attainable recreational uses.

The Association and its member districts are specifically involved in the implementation of several programs, projects and processes as it relates specific to federal Clean Water Act requirements and/or State Environmental Quality Act. These include, but are not limited to Section 305(b) State Water Quality assessments, Section 303 Water Quality Standards, Section 303(d) Water Quality impairment

determinations/Total Maximum Daily Load programs; Section 404 permitting, Section 402, National Pollutant Discharge Elimination System, among others.

The extensive level of implementation activity related to water quality enhancement and improvement undertaken by conservation districts, specifically related to Section 303(d), are detailed in the “Watersheds Progress Report” published periodically by the Association. These reports also detail the significant financial investment that the districts, local communities, landowners/homeowners, and the state of Wyoming have put forth into water quality improvement efforts. Please note, that from 2011 to 2014 the combined investment into watersheds over a span encompassing two years, exceeded \$34 million. A significant portion of this \$34 million in nonfederal, private, local and state government investments. All of these investments apply to those waters identified as impaired and threatened on the states Section 303(d) list.

Of the \$34 million, \$22 million was spent specifically in watersheds with waters listed as impaired or threatened due to elevated levels of *E. coli* and subsequently the use impaired is primary recreation.

As stated earlier, there are significant resources being invested in implementing best management practices to improve water quality. There are 65 water listed as impaired in Wyoming for exceedances of *E. coli* of which only four would change from primary to secondary. Based on preliminary data three of these waters would meet the secondary standard.

As we move forward with meeting the goal of clean water, it is important that the standard that is applied reflect the uses that are attainable, or in the case of primary and secondary contact recreation activities, the inherent risks that exist. Resources, both financial and human, should be focused on waters where the risk to human health is elevated due to the increased potential for ingestion. We have an obligation to ensure we are focusing our resources where contact recreation activities occur and a greater risk of ingesting quantities of water exists. It is irresponsible to do otherwise, however the current approach places both the local districts and DEQ in that position.

Department Response: See Rationale for Modifying Recreational Designated Uses Summary Response.

Jonathan Downing, Executive Director, Wyoming Mining Association: WMA continues to support the State’s efforts to develop a method to identify streams that do not support primary contact recreational use and the reclassification of these streams. This reclassification will allow the State to focus their attention on impaired streams, which truly support primary contact recreation and potentially require corrective actions.

The reclassification of small streams with the appropriate secondary recreation status will allow regulators to focus their attention on impaired primary contact recreation waters. These are the waters that will actually be used for immersion and recreation and should be the streams that the general public and WDE/WQD are focused on to ensure that the water quality standards are maintained. The data that has been gathered during this project will also be beneficial in the State’s efforts to prioritize impaired water bodies for improvement as a large amount of data has been gathered on stream flow, water quality, and stream conditions.

The delay or failure of the UAA may actually draw focus away from impaired streams where recreation is common and towards streams unlikely to ever be used recreationally. This will delay timely improvements to stream conditions with the limited funds and staff that WDEQ/WQD has.

If the reclassification is disallowed for appropriate streams, dischargers including municipalities, agricultural interests, and mining companies may have difficulty meeting the primary recreation standards, especially when the discharge waters include a component derived from wildlife activity, and livestock grazing. In some cases, compliance with the standard could significantly reduce the amount of water allowed to be discharged even though the additional water would be beneficial for downstream users and in-stream aquatic life. If the categorical UAA is disallowed, the potential cost of treatment for discharging to a stream that often is near or above the revised e. coli standard due to activities unrelated to the discharge will increase unnecessarily.

WMA appreciates the opportunity to again comment on the UAA. We support the approval of the UAA and believe it will more effectively focus the attention of WDEQ/WQD on bacteria impaired streams with primary recreation potential where improvements can be efficiently made and are warranted.

Department Response: See Rationale for Modifying Recreational Designated Uses Summary Response.

Franz Camenzind, Jackson, WY: Why would the one agency charged with the protection of Wyoming's environmental quality downgrade 76 percent of the state's waterways to allow five time more E. coli pollution? Why is this downgrading being considered? Who or what group(s) is pushing for this downgrading? And, what purpose will it serve? Without a clear and agreed upon purpose and need, DEQ's new CUAA should never have occurred, and its conclusions are inappropriate and should not stand.

Department Response: See Rationale for Modifying Recreational Designated Uses Summary Response.

Doug Miyamoto, Wyoming Department of Agriculture: Again, my name is Doug Miyamoto. I'm the Director of the Wyoming Department of Agriculture, and I'm here today to stand in support of DEQ's categorical use attainability analysis for recreation.

The reason that we support this proposal is because it allows us a more accurate baseline of designated uses for water bodies across the state, and it allows us a cleaner process than the current method does. I think it's important to point out that all water bodies in the state will still be protected for contact recreation. The goal here is to designate whether those support primary or secondary contact recreation.

I have done personally a lot of - I've completed a lot of use attainability analyses myself, and I've submitted these use attainability analyses before, and I can tell you from personal experience, it simply isn't feasible to conduct use attainability analysis for recreation on 80,000 miles of stream, particularly when this method doesn't offer the Department of Environmental Quality any improvement in water quality administration.

I think that it's important to point out that as a regulatory entity ourselves with the Wyoming Department of Agriculture, we view accuracy as core foundation of responsible regulation. I think it holds true here, and DEQ's categorical use attainability analysis proposal provides a much more accurate baseline than the current system, certainly much more than the rebuttable presumption and a carte blanche layer of assuming that everything in the state can support primary contact recreation until it's proven otherwise.

Also, as the Wyoming Department of Agriculture, we contribute funding through our budget to local governments through conservation districts a significant amount of money for water quality monitoring, and it simply isn't reasonable for us to send that money ahead, pass it through, knowing that a lot of that is going to be turned into useless use attainability analysis. We already knew the answer before we went out there.

Wyoming is one of the highest, driest, coldest and least populated states in the Union. I don't say that to belittle the state. It's some of the reasons that I love it as much as I do. I think it makes it appealing, but that being said, it's not appropriate to designate water bodies for full-body immersion in risk of ingestion. That's at the basis of this water quality criteria, what is at risk of ingestion of this water to cause illness, and when you're not immersed in that water, a lot of our water bodies just simply don't provide that opportunity.

Department Response: See Rationale for Modifying Recreational Designated Uses Summary Response.

Bobbie Frank, Wyoming Association of Conservation Districts: As you are aware, the districts work extremely hard to protect water quality. In the past four years alone, districts have led the efforts in their communities to protect water quality through assessment and implementation. This represented in the last four years alone a \$34 million investment. Of that 34 million, 22 million was invested specifically on 65 water bodies that are listed for E. coli.

Conservation districts have a statutory and moral responsibility to ensure the water quality efforts are focused where waters that are at risk to human health is higher due to the type of activities that it can support. If there are primary waters, we ought to be taking care of our primary waters for those contact rec, and we are still going to be committed to our secondary waters and making sure those support secondary uses. I don't believe there's any other entity of local government that spends the kind of time, money and energy in water quality protection that the districts do that will continue.

Department Response: See Rationale for Modifying Recreational Designated Uses Summary Response.

Steffen Cornell, Meeteetse Conservation District: It goes without saying that in order to adequately implement the Clean Water Act, we must be working with accurate data and properly classified waters.

Department Response: See Rationale for Modifying Recreational Designated Uses Summary Response.

Kristin Tilly, Shoshone Conservation District: We have 1,609 stream miles according to DEQ's in an average six-inch annual precipitation area. The very large majority of those stream miles just cannot and will not support primary recreation. Prior to this categorical UAA, they were listed as doing just that.

Accuracy should be, has to be, a goal everyone supports.

Accuracy is necessary to have our resources, valuable time and dollars wisely and most effectively used where they can have maximum impact for the health, safety and general welfare of Wyoming's water users. Thank you for listening.

Department Response: See Rationale for Modifying Recreational Designated Uses Summary Response.

Phil Murphree, Wyoming Mining Association: Reclassification of small streams with the appropriate secondary recreation status would allow regulators to focus their attention on impaired primary contact recreation waters. These are the waters commonly used for immersion and recreation and should be the streams that the general -- and water that the general public and WDEQ are focused on to ensure that the water quality standards are maintained in the state.

This data that has been gathered in this project would also be beneficial to the state's effort to prioritize impaired water bodies' improvement as a large amount of data has been gathered on stream flow, water quality and stream conditions.

Department Response: See Rationale for Modifying Recreational Designated Uses Summary Response.

Wayne Garman, Crook County Natural Resource District: It is imperative that Wyoming's waters are accurately protected for the attainable recreational uses.

The delay or failure of the UAA may actually draw focus away from impaired streams and recreation as common and toward streams unlikely to ever be used recreationally. This will delay timely improvements in stream conditions with the limited funds that WDEQ has.

For many streams, the secondary recreation standard is sufficient protection for low-flow conditions where resident time is great in the stream. Many streams and minor water bodies across Wyoming for which no individual UAA has been conducted will currently not meet the primary recreation, E. coli standard, wildlife impacts and grazing, even though those streams might be used periodically.

If the reclassification is disallowed for appropriate streams, dischargers, including municipalities, agriculture interests and mining companies, may have difficulty meeting the primary recreation standards, especially when the discharged waters include a component derived from wildlife activity, waterfowl and livestock grazing.

In some cases, compliance with the standard could significantly reduce the amount of water allowed to be discharged, even though the additional water would be beneficial for downstream users and in-stream aquatic life.

If the categorical use UAA is disallowed, the potential costs for treatment for discharging into a stream that is often near or above the primary E. coli standard due to activities unrelated to the discharge will increase unnecessarily.

We support the approval of the UAA, and we believe it will more effectively focus the attention of WDEQ on bacteria-impaired streams with primary recreation potential where improvements can be efficiently made and are warranted.

Department Response: See Rationale for Modifying Recreational Designated Uses Summary Response.

Shaun Sims, Wyoming Association of Conservation Districts: What this is getting the proper use that that water can sustain so that we can put the valuable resources, our time, our energy, our money into those areas that need -- that have the ability to support primary contact recreation and have those areas that possibly need some best management practices to upgrade those rivers' water quality that are not meeting their standard now. That is both an expensive process. The process that would have gone through with the UAA on each individual stream was a tremendously long, expensive process. This model gets those streams that would have been classified anyway. We have to take and account for those that are going to be in the edge of that model, but there is an avenue to do that.

Department Response: See Rationale for Modifying Recreational Designated Uses Summary Response.

Jim Magagna, Wyoming Stock Growers Association: It just seemed like this system needed an appropriate baseline. As we understood it, these streams had never been classified, truly classified, as primary recreation. They had been, as a group, placed in that category when the categorization system was created.

So this was the first real attempt by DEQ, utilizing other resources, to create a classification for these streams, and we believe that the standard of beginning with the secondary recreation classification is an appropriate starting point for Wyoming, given the nature of our streams in Wyoming. It left the flexibility to still move streams, as was necessary, to a higher classification. It didn't, in our view, represent a downgrading, because we have never classified these streams, except in bulk, just placing them someplace. So it represents a first attempt at classification.

I find it interesting, particularly in light of a previous comment, that if I might quote briefly, in March of 2014, the Rocky Mountain Region of the US Forest Service submitted comments to you in which they stated that "we support the shift from a single recreation use designation where all waters were managed for primary contact recreation. The proposed changes in recreation use designation will help us to better manage water quality for protection of recreational use by focusing available resources to those locations where primary contact recreation use is actually occurring or can potentially occur."

So at least at that just slightly over a year ago, the Forest Service, on which many of these streams was located, were strongly supporting the classification system that you've implemented.

Department Response: See Rationale for Modifying Recreational Designated Uses Summary Response.

4.4 Recreation Designated Uses and Criteria

Phil Powers, Executive Director, American Alpine Club: We understand that the practical effort of your decision is to allow a 500 percent increase in the levels of *E. coli* in small streams throughout the state. We cannot support an action that would increase the likelihood of gastrointestinal illness in people who use these streams for primary contact recreation.

Our members are climber, mountaineers and adventurers. We often engage in our sport in areas where small tributary streams are the dominant water supply: for example, in high mountain cirques in

the Wind River Range and the Bighorns. Many of our members also enjoy climbing in lower elevation desert environments, such as the Sweetwater Rocks, Lankin Dome and the Pedros. In either case, water is a precious commodity and should be managed as such. Climbing and mountaineering can be risky, arduous and physically challenging sports; the last thing we need to worry about when descending to the flat ground is whether the water is safe to rinse off in or splash on our faces.

Department Response: See Recreation Designates Uses and Criteria Summary Response.

Eric Concannon, Lander, WY: I am a backpacker, mountain bike, and long-distance hiker. I frequently pass through and take drinking and cooking water from low flow streams that are far from towns and developed campgrounds and trailheads. The presence of *E. coli* in these streams threatens my health and safety, as well as the security of my family should I be unable to work due to severe illness. I ask that you consider this when assessing the rule and adjust it accordingly.

Department Response: See Recreation Designates Uses and Criteria Summary Response.

Neil and Jennifer Miller, Basin, WY: We in Wyoming should be able to recreate on, near, and in our public waterways without the fear that our children and grandchildren let alone ourselves would be exposed to *E. coli* which would make us very ill.

Please explore alternatives that would keep our state waters safe for our citizens to enjoy as we explore our wonderful state.

Department Response: See Recreation Designates Uses and Criteria Summary Response. Also See Changes to Water Quality/Protection of Downstream Waters.

Jennifer Hinkhouse, District Manager, Campbell County Conservation District: In order to focus our comments, it is imperative that the *E.coli* standard be discussed. The true purpose of the recreation use designation is to determine the appropriate standard for *E.coli* within a waterbody that will protect the attainable uses of that waterbody. CCCD recognizes that this standard is based on the potential risks associated with full body submersion during recreational uses. Thus the less likely someone could submerge themselves the less likely they are to ingest water and the potential risk is thus decreased in comparison to full body submersion.

According to the Environmental Protection Agency (EPA), *E. coli* is a type of fecal coliform bacteria commonly found in the intestines of animals and humans. The main *E.coli* strain of concern is *E.coli* 0157:H7. This is the disease causing strain can be produced by human, livestock or wildlife sources. This strain is commonly found in the guts of deer and elk but has also been found in some birds and pigs. CCCD recognizes that the *E.coli* standard is also used as an indicator of other potentially harmful pathogens, such as *Cryptosporidium*. CCCD feels that although *E.coli* is an effective fecal indicator, it is important to note that its presence alone will not indicate if the water is harmful but instead infers that pathogens may be present.

Department Response: See Recreation Designates Uses and Criteria Summary Response.

Shaun Sims, President, Wyoming Association of Conservation Districts: Most strains of *E. coli* are harmless and live in the intestines of healthy humans and animals. The strain of *E. coli* that is a concern is 0157:H7. In fact, there are an estimated 20,000 cases of *E. coli* infection in the US annually, with 250 resulting in death. There are many foods and sources that are carriers of this strain of *E. coli*, including

raw milk, untreated water, unpasteurized apple juice, deer jerky, infected persons who do not wash their hands, among many others. For comparison sake, there are 56,979 deaths in the US from the flu and the CDC ranks it as the 9th leading cause of death. The probability of getting sick from waters in Wyoming is extremely low.

The *E. coli* standard is also utilized as an indicator of other pathogens that may exist and cause illness. It is important to point out that there are many sources of these pathogens, including wildlife. *Cryptosporidium* has been found in over 150 animal species, including squirrels, chipmunks, coyotes, deer, elk, rabbits, raccoons, rodents, otters, skunks, opossums, and birds. Pathogenic strains of *E. coli* are common in the gut of ruminant wildlife like deer and elk and have also been found in birds and pigs.

Department Response: See Recreation Designates Uses and Criteria Summary Response.

Dave Hohl, Pinedale, WY: Many people recreate at developed sites such as campgrounds and other developed areas. Others seek more personal and private experiences at dispersed sites spread across the state's invaluable public lands. And yet others, such as bicyclists and hikers on the Continental Divide National Scenic Trail cross remote areas such as the Red Desert. A large portion of these recreationalists seek water as an important element of their experience and sustenance. As Wyoming is an arid state, locations with water are particularly prized, not only in forest settings, but even more so in the desert. These streams and springs are often small, below the 6 CFS standard. Kids play in these streams. This type of dispersed recreation can occur anywhere on public lands, and also on private. It is appropriate and reasonable that citizens expect settings reasonably free of health hazards.

Recreation and tourism is the second largest economy in the state – second only to minerals. Much is at stake economically in insuring that Wyoming not acquire the reputation that its waters are being managed in a manner that they are not safe for citizen occupancy and use.

Department Response: See Recreation Designates Uses and Criteria Summary Response.

Carlin Girard, Water Resource Specialist, Teton Conservation District: The Teton Conservation District (TCD) sincerely thanks you for the opportunity to provide input during this Categorical UAA process, through written comments, and public hearing. We know and understand the challenge that managing *E. coli* criteria throughout Wyoming is to WDEQ, and Conservation Districts. We also believe that the intention of this categorical approach is logical, but could be adjusted slightly to both reduce environmental and human health concerns, but also increase public and EPA support for this process. Because our District's primary use on public lands is recreation, and our County's primary revenue source is recreation, we feel that special consideration should be paid to water quality criteria in our streams and rivers.

Across Wyoming landscapes for which recreation is the predominant use, and livestock grazing is not present, possible *E. coli* sources include wildlife, humans, and pets. Because management of *E. coli* derived from wildlife sources will likely not occur, human and pet fecal waste are the two sources that 'secondary contact' criteria will increase acceptable limits. It is the opinion of TCD that in no circumstance should we allow human and pet waste to contribute to *E. coli* concentrations where 'primary contact' is not recommended. As a result, we recommend that *E. coli* concentrations never be allowed to exceed 'primary contact' standards, if the predominant sources are shown to be human or pet waste using DNA techniques. Another way to approach this issue on public lands is by altering your

model to only change stream designation to 'secondary contact' in those areas where active grazing allotments occurs.

Two additional caveats to the current model that could reduce unnecessary downstream impairment are: not changing recreational use standards to 'secondary contact' in tributaries to Class 1 Waters; and not changing recreational use standards to 'secondary contact' in tributaries that drain into waters impaired due to *E. coli*, or other water quality issues pertaining to human, wildlife, or livestock waste. Although major waterways will maintain 'primary contact' standards, I believe this type of adjustment to the existing model would affect a relatively small amount of waters, and is proactive solution to future potential determinant that could result in stream listing, and associated requirements. Class 1 Waters have a high level of protection, and watershed science clearly shows that upstream effects can result in downstream problems. For this same purpose, maintaining high standards for tributaries of streams impaired by *E. coli* concentrations will assure that managers have the ability to directly address impairment of 'primary contact' waters with a watershed approach.

It is also worth mentioning that within Grand Teton National Park, *E. coli* from human sources have been sampled from high elevation waters, where backcountry use is high. In this case, sampling of elevated *E. coli* that was matched by DNA to humans resulted in regulations that require climbers and hikers to pack out waste. I mention this because while waters within the Grand Teton National Park will remain as 'primary contact' streams, many of the streams flowing from the west slope of the Tetons share substrate and use characteristics with those within Grand Teton, but are less regulated in terms of human use. Considering the sensitivity of areas with coarse substrates, incapable of filtering or processing contaminants could be incorporated within a Categorical UAA, and could result in water quality protection in areas that are used predominantly by humans, who are also using these water sources for bathing, drinking, etc.

At the statewide scale, it does appear that the Categorical UAA may have resulted in an increase of recreational use classification. It does not however consider that some areas have an unprecedented level of backcountry human use, which results in high levels of human contact with waters. Also, the existing analysis does not consider that in these areas of high human use, humans and pets can be a primary source of *E. coli*, and I do not think that anyone believes that human and pet waste should be allowed at levels, where human contact presents a health risk. As a result, we strongly encourage WDEQ to please consider that the statewide approach does not serve all regions or stakeholders equally, and therefore should be adjusted to protect water quality in the backcountry settings with high use, and protect the users of these area from themselves.

Department Response: See Recreation Designated Uses and Criteria Summary Response. Also see Class 1 Waters, Changes in Water Quality/Protection of Downstream Water Quality, and Maintaining Water Quality Summary Responses.

WDEQ's Categorical UAA is solely based on whether primary contact recreation (swimming or contact with the water equivalent to swimming) is an existing or attainable use during the summer recreation season due to whether there is sufficient water to support full body immersion or accessibility of low flow channels to small children. Sources of *E. coli* and/or pathogens are not relevant to determining whether primary or secondary contact recreation is an attainable or existing use in this analysis. Concentrations of actual pathogens, rather than pathogen indicators, could potentially be used to develop site-specific criteria water quality criteria to protect recreational uses in circumstances where there are limited anthropogenic sources of pathogens.

Sandy Shuptrine, Chair, Teton Conservation District: Although our district cooperated in collecting water samples for the UAA, neither the staff nor board adequately understood the intended use of the data or were aware of the possible consequences. Our mission is *to promote conservation and management of natural resources-air, land, water, vegetation and wildlife through watershed-based research, education, conservation practices, cooperative projects, and on-the-ground actions to ensure the health, safety and general welfare of the people and resources of this area.* I am very concerned that WDEQ's proposed action may be detrimental to that goal.

At this time, the Teton Conservation District is engaged with multiple stakeholders who represent the State of Wyoming, the private sector, local governments and the Federal Government to conduct watershed-based studies. These include the Wyoming Water Development Commission, Wyoming Game and Fish, the US Geological Survey and many others. Stakeholders, including our district, have invested significant funds, time and attention to studying Upper Snake River Watershed, Flat Creek and Fish Creek.

Any action that may have an effect on the above named watersheds is putting the cart before the horse, not to mention wasting tremendous resources. While I understand that many of the streams in question are small tributaries to those mentioned above, I also know that water flows downstream. Twelve seasons spent volunteering for the BLM on the San Juan River cause me to be acutely aware of upstream events due to the recent toxic accident on the Animas.

Department Response: See Recreation Designates Uses and Criteria Summary Response.

Daly Edmunds, Regional Policy Coordinator, Audubon Rockies: The ribbons of rivers and stream that cut through Wyoming's landscapes not only provide people with life sustaining water but also provide crucial habitat for hundreds of species of migrating, nesting, and wintering birds. For example, the food source of avian species, such as Bald Eagles and American Dippers, are directly dependent on the quality of the rivers. Maintaining healthy riparian ecosystems are important not only for avian species but also our communities.

The Clean Water Act, which regulates quality standards for surface waters, sets a goal that where attainable, water quality provides for the protection and propagation of fish, shellfish and wildlife, and recreation in and on the water will be achieved. We argue that this proposal by DEQ contradicts the letter and spirit of the Clean Water Act. Given the importance of outdoor recreation to residents, this downgrade could have economic impacts as those participating in outdoor recreation may be concerned about the safety of the water they are encountering.

Audubon staff and members, including those that participate with independent local chapters throughout Wyoming, recreate in areas referred to as "low flow" streams. They are among 71% of residents that participate in outdoor camping, hiking (day hikes and extended backpacking trips), fishing, hunting, photography, canoeing/rafting, and simply enjoying the beautiful landscapes and wildlife that makes Wyoming unique. Outdoor recreation in Wyoming generates \$4.5 billion annually in consumer spending and \$300 million in state and local tax revenue.

Department Response: See Recreation Designates Uses and Criteria Summary Response.

Armond Aciri, Jackson, WY: I know from my work that it is possible to suffer the consequences of E. coli induced illness without being fully immersed, in full contact with or directly ingesting

contaminated water. The best way to avoid contamination and protect human safety is to keep coliform levels as low as possible.

Many backcountry travelers store beverages in cans or bottles in small stream to keep them cool. My dogs drink and fully immerse themselves in small streams. When they emerge, they shake and fling water everywhere including my face. In hot weather I frequently douse my hair or shirt in small streams to cool off. If it is really hot, I may sit in a small pool and dump water on myself. I often rinse my hands and face in small streams to rinse off trail dust and sweat. (I do not use soap because it would degrade the water quality.) When I fish, I lick the leader to make it easier to tie the knot. Even small streams of less than 6 cfs can still have small trout that are a challenge to catch. All of these activities would put me at risk of ingesting sufficient *E. coli* to put my health at risk because they would allow contaminated water to get in or near my mouth and nose without being fully ingested. In addition my dogs are at risk if there are increased *E. coli* levels in the small streams where they drink when we recreate and bird hunt. If they get sick, there is a good chance I may become infected as I am their primary care giver. Even if I do not get infected, the dogs will spread *E. coli* to other locations creating a bigger problem for our community.

Department Response: See Recreation Designates Uses and Criteria Summary Response.

Franz Camenzind, Jackson, WY: I for one, and many other back country recreationists frequently use low flow streams, e.g. less than 6 CFS, for cooling off and for a source of drinking water.

Department Response: See Recreation Designates Uses and Criteria Summary Response.

Rob Davidson, Council for the Bighorn Range: We believe the decision that there is not “an existing or attainable use” cannot be defended in the reality of Wyoming’s backcountry recreational use. From the headwaters in wilderness and roadless areas to these, the ephemeral streams make backcountry travel and safety possible. Jokingly referred to having a “screaming Viking bath” in the spring pulse of snowmelt is part of the primitive outdoor experience.

Department Response: See Recreation Designates Uses and Criteria Summary Response.

Paige Smith, Cheyenne, WY: I have read the August 14, 2014, Categorical Use Attainability Analysis for Recreation document and did not find a single reference to the fact that the secondary stream designation means that the permissible level of *E. coli* increases from a geometric mean of 126 organisms per 100 milliliters to a geometric mean of 630 organisms per 100 milliliters during the summer recreation season. I would also recommend that this integral point to be clearly presented in future document regarding the Categorical Use Attainability Analysis for Recreation. The omission of what the UAA reclassification really means to outdoor recreation enthusiasts only adds to the negative perception problem.

Department Response: WDEQ/WQD has revised the Categorical UAA to include discussion of water quality criteria. Also see Recreation Designated Uses and Criteria Summary Response.

Doug Miyamoto, Wyoming Department of Agriculture: I think here it’s also important to illustrate how the original standard for contact recreation was developed. I think it’s important to note that this is a decades-old process, and these standards were developed by surveying people at public swimming beaches on the East Coast and the Great Lakes region where primary contact recreation was occurring.

And there was subsequent surveys that were sent out following that contact with the water, but it doesn't represent the vast majority of recreation that occurs in a lot of the streams in Wyoming.

Department Response: See Recreation Designates Uses and Criteria Summary Response.

Bobbie Frank, Wyoming Association of Conservation Districts: First, in light of the fact that the E. coli standard is a risk-based standard that is based on potential for ingestion of water, it is important to recognize, as the director of WDA indicated, some waters are capable of supporting primary contact recreation activities that increase our likelihood of ingesting versus those lower flow water where that risk is minimized. Subsequently, we should apply different standards to those different levels of risk, because the E. coli standard again is a risk management standard. It is not an absolute.

In addition, current science indicates that - and this is according to EPA, and it's referenced in our comments. Current science indicates that the human waste has a higher likelihood of causing illness in humans and that further supports protecting those waters where there may be a higher risk of human waste contributions.

Department Response: See Recreation Designates Uses and Criteria Summary Response.

Christine Lichtenfels, Lander, WY: I'm here just on behalf of myself as a citizen of Wyoming, and much of what I was going to say has already been said by preceding speakers.

One of my big concerns, I have spent, you know, close to 300 weeks working professionally in the mountains, instructing or guiding the public, some of them young, you know, 13 and 14 years old, 15 years old, some of them 60, 70 years old. You know, it ranges. And so I feel like I have a good understanding of how far people travel and what people will use when they are recreating, what constitutes water that you will immerse yourself in.

And while -- you know, when you're living in the front country, you think you're going to swim in a lake. When you've been, you know, working hard, maybe been on a glacier for a while -- and the Winds do have quite a lot of glaciers -- or it's been raining, or whatever, and you finally get to a place where there's some running water and you haven't had a bath or shower or anything for a week or ten days, or however long it might be, very small amounts of water are adequate to fully immerse yourself. I promise you that.

I mean, we're not -- that's not a question, but wilderness areas -- I guess I should also mention, you know, as I have been a trail runner for much of my adult life, and when you're running, you cover an awful lot of terrain and, you know, you come across any little bit of water, and if you can throw water on your head, which truly, that's the most critical part of full immersion part anyway, and take your ball cap and put water in it and put it over your head so the water keeps dripping over your face so you can try to cool down until you hit the next water body, you know, that's what you do that, to me, is also core of what living in Wyoming is about, that you can go explore.

I don't know every single place that I may, in the future, want to run or hike, or whatever, so I can't identify every stream, which, of course, is why you want a model, and I understand that, but I definitely think that you know, a key part of recreation is that much, much smaller water bodies are adequate to immerse your body in when you have been out in the mountains for a long time and are desperate and are not, you know. Your standards are different than they are from when you are in the front country.

Department Response: See Recreation Designates Uses and Criteria Summary Response.

Dick Inberg, Wyoming Wilderness Association: It's common now to take solar showers. We've got these little solar devices where we can take solar showers. We can dip this water up and put it in a bag, and in a couple of hours, we've got a warm shower.

We're using water out of these low-flowing streams and putting it all over our bodies and ingesting some of it. You can't help but do it. And I've drank a lot of water in our backcountry over the years. Of course, now I use a filter, but I didn't always.

In the backcountry, we use streams classified as secondary contact more than primary contact streams, because in the high country, we're away from the streams, and the main streams, we're on the secondary streams. That's what we're using.

Department Response: See Recreation Designates Uses and Criteria Summary Response. Also see Changes in Water Quality/Protection of Downstream Waters Summary Response.

Connie Wilbert, Sierra Club Wyoming Chapter: When I hike with my family, we often, if it's a hot summer day, hop in a pool and splash around and get water all over ourselves. I consider that full immersion. I don't think that I need to be able to swim laps in it to qualify it as full immersion.

I think if people are getting water over their face and heads and all over their bodies, that counts. And kids do it all the time. I mean, we all know that. And we should want them to. We shouldn't want to not let our kids play in creeks. That's what we do.

Department Response: See Recreation Designates Uses and Criteria Summary Response. Also see Changes in Water Quality/Protection of Downstream Waters Summary Response.

Shaun Sims, Wyoming Association of Conservation Districts: The E. coli standard is an indicator. It is not an absolute. There are a lot of E. coli strains that are not toxic or cause human health issues. The strains live in both humans and animals. So if the E. coli standard is not met, it is not necessarily a hazardous stream; however, we do want the E. coli to meet the state standards, to meet EPA standards, and with this model, it allows us to put them resources into the proper areas that need that attention.

Department Response: See Recreation Designates Uses and Criteria Summary Response.

Jim Magagna, Wyoming Stock Growers Association: I found it interesting, sitting here tonight, that until the last speaker prior to myself, the issue of E. coli was never mentioned and yet that's what this classification system is all about. It's not about my preference for where I would like the stream to be classified or someone else's preference, it's about attainability. It's about meeting the ability of a stream to attain a certain level of -- attain and maintain a certain maximum level of E. coli. So we think this was the right approach to that.

Department Response: See Recreation Designates Uses and Criteria Summary Response.

4.3 Changes in Water Quality/Protection of Downstream Water Quality

Ty Cook, Jackson, WY: It is my belief that in light of the growing water crisis our nation faces, the reduction in quality of any of our surface water assets is folly. The EPA states that 44% of our nation's streams are polluted. This is unacceptable. Any regulations or rules created by the agencies protecting our waters should lower that percentage and improve the health of our hydrologic systems, not further degrade them.

A major flaw in this policy decision by DEQ is that as well all know, water flows downhill. Obviously if an upstream water course is reclassified as secondary, and then becomes polluted, any primary water courses downstream will be negatively impacted.

As an avid outdoorsman, I have frequented many of the streams in question. I have swum, drank from, and fished in some of the most pristine bodies of water imaginable in our state, and I want them to stay that way.

Department Response: See Changes in Water Quality/Protection of Downstream Water Quality Summary Response.

David and Reade Dornan, Jackson, WY: We would like to take a stand against downgrading secondary, "low-flow" waterways to allow a higher level of e-coli in Wyoming's back-country streams and rivers.

Our main concern is that the degradation of ANY waterways, however remote, cannot easily be reversed, and once lower standards are allowed, the bacteria can spread. It's taken years to clean up many rivers and lakes in the U.S., so now that the EPA has set higher standards through the Clean Water Act, Wyoming should take advantage of the regulations to monitor and control the quality of all the rivers, whether they are situated in seemingly unvisited areas or not.

While the new plan makes operations easier for industry and agriculture, overlooked is the interconnectedness of our natural resources. Polluted back-country streams can be close to hikers' trails and drain into more mainstream rivers. We need to maintain accurate data on the e-coli levels, so we can protect the public from the spread of harmful bacteria to any part of the state.

Particularly in Wyoming, where we take pride in our pristine wilderness, these waterways are visited by wildlife, hikers, and waders who are exposed to e-coli and other dangerous bacteria. It's difficult to believe that the Wyoming DEQ is proposing to backslide to more harmful degradation of the resources we so prize. Because the recreation industry is vital to our economy, we should not be risking our reputation to satisfy agricultural demands.

Please withdraw your proposal to give up on cleaner water.

Department Response: See Changes in Water Quality/Protection of Downstream Water Quality Summary Response.

Michelle Irwin, Green River, WY: Wyoming should have high standards for our waters, regardless where they are, but particularly in mountain streams. Our family loves to go deep into the mountains to fish and otherwise enjoy the cool, free flowing water. To consider that we may be encountering e-coli at 5% higher rates than before the August 20 rule is disturbing and disgusting.

Department Response: See Changes in Water Quality/Protection of Downstream Water Quality Summary Response.

Linda Ransom, Evansville, WY: It is absolutely absurd this day and age to hear any one ask for more pollution! This is big news across the internet and I suspect we will soon be the laughing stock of the nation. I guess the Wyoming Office of Tourism will have to start singing a different tune about our abundance of wildlife, clean air, clean water, blue ribbon fishing and incredible wide open spaces. The Equality State will become the E-Coli State. It is obvious that DEQ, which is designed to protect the population, is not sensible and cares nothing for human health and will ensure that many violations caused by livestock grazing will now be just fine and perfectly legal. All of this downgraded water will be flowing somewhere and eventually this will have a very unhealthy and damaging effect on Wyoming's future.

Dangerously high levels of E. coli bacteria can cause serious health problems in humans and is in violation of the federal Clean Water Act. Wouldn't it be much wiser, prudent and less costly to keep water clean than to try to clean water that has become dirty and polluted? This is totally unacceptable and a complete disrespect of Wyoming residents and tourists.

Department Response: See Changes in Water Quality/Protection of Downstream Water Quality Summary Response.

Aaron, Tamsen, Noah, Nate and Neve Pruzan, Rendezvous River Sports: As someone who spends a lot of my life with my head underwater, water quality is very important to me. My entire family enjoys swimming, paddling and recreating in rivers and streams of all sizes throughout the mountains of northwest Wyoming. In addition many of us in Teton County worked tirelessly to win Wild & Scenic Status for the Snake River watershed for its outstanding values – including its amazing water quality. Therefore I am extremely disappointed with your decision to downgrade water quality on small rivers and streams.

As a state at the top of the continent Wyoming must always strive to have the cleanest water in the world. Clean pure mountain water is a legacy that everyone in Wyoming should be proud of. I urge you to please reconsider your hasty decision and insure that mountain streams and rivers in Wyoming have amazing clean water for future generations to enjoy.

Department Response: See Changes in Water Quality/Protection of Downstream Water Quality Summary Response. Also see Maintaining Water Quality Summary Response.

Cynthia Stevens, Lander, WY: I am deeply concerned about plans to lower water quality standards for Wyoming's water resources, with plans that could allow up to five times more E. Coli bacteria in our waters.

Not only are high mountain streams and rivers important for recreation for Wyoming residents, they are essential for attracting tourists who provide revenue and outfitter employment.

Any degradation in water quality in our headwaters and high mountains streams and rivers will impact rivers and streams at lower elevations – in our towns and cities. It is not simply a question of lower water quality being confined to less remote areas. It is also not correct to assume that any degradation at higher elevations will be diluted as the waters descend.

Please support maintaining water quality for one of Wyoming's greatest natural resources – its natural waters.

Department Response: See Changes in Water Quality/Protection of Downstream Water Quality Summary Response. Also see Maintaining Water Quality Summary Response.

Jennifer Hinkhouse, District Manager, Campbell County Conservation District: It has been asserted throughout the various comment periods that our organization in conjunction with the WDEQ would like to apply a “statewide downgrade” in the water quality standards. CCCD would like to point out that this model is looking at the whether or not a particular use can be supported by the waterbody not an impact on the current water quality.

Department Response: See Changes in Water Quality/Protection of Downstream Water Quality Summary Response.

Wayne Garman, Chairman, Crook County Natural Resource District: Contrary to the claim that the proposed Categorical Use Attainability Analysis will downgrade water quality, it simply assigns waters a classification based on existing water quality and what use it actually supports.

Department Response: See Changes in Water Quality/Protection of Downstream Water Quality Summary Response.

Kevin Gaukel, Chairman, Niobrara Conservation District: The designation of a water body as secondary recreational use does not decrease the existing water quality of these sites. It is simply making a designation based on a set of criteria.

Department Response: See Changes in Water Quality/Protection of Downstream Water Quality Summary Response.

Jack Berger, Chairman, Saratoga-Encampment-Rawlins Conservation District: We firmly believe that using this method will not compromise water quality protection in our District. The model is not reducing the responsibility of anyone to perform BMPs to protect Wyoming's surface waters.

Department Response: See Changes in Water Quality/Protection of Downstream Water Quality Summary Response.

George Kelso, Chairman, South Big Horn Conservation District: We have additionally heard detraction from the Categorical UAA saying that it will reduce the protections for Wyoming water. We strongly disagree with this contention. The Categorical UAA in no way changes the water standards. It does take a major step forwards in properly classifying the State's waters, and we believe claims that it reduces the protections are arguments against the standards that have been set and have nothing to do with the Categorical UAA.

Department Response: See Changes in Water Quality/Protection of Downstream Water Quality Summary Response.

Shaun Sims, President, Wyoming Association of Conservation Districts: This is important to note, in light of the recent press indicating this proposed Categorical Use Attainability Analysis, is a widespread

“downgrading” of water quality. The UAA determines, based on a set of criterion, if a particular use can be supported. The water quality will not be impacted by this change.

Department Response: See Changes in Water Quality/Protection of Downstream Water Quality Summary Response.

Jonathan Downing, Executive Director, Wyoming Mining Association: The public’s recent focus on small mountain streams and statements that the UAA will cause the water quality of these streams to be degraded is incorrect. It is also incorrect to state that these streams will no longer have applicable water quality standards as the secondary recreation standard will still apply. Many streams and minor water bodies across Wyoming for which no individual UAA has been conducted will not meet the primary recreation e-coli standard due to wildlife impacts and possible grazing.

Department Response: See Changes in Water Quality/Protection of Downstream Water Quality Summary Response.

Andy Blair, Lander, WY: Under the UAA the Middle Fork of the Popo Agie is designated Primary Contact for Recreation. Despite that designation, it is the norm that the Health Department posts signs in August warning of dangerous levels of e. coli present in the surface water. Given that this is the case on a river designated for Primary Contact for Recreation, it makes me very concerned about what level of degradation will be permitted in Secondary Contact for Recreation surface waters.

Department Response: See Changes in Water Quality/Protection of Downstream Water Quality Summary Response.

Peter Dvorak, Riverton, WY: I am concerned about the “red lining” of an astounding number of miles of low-flow, slow-flow and occasional no-flow water courses in the state. Disregarding the contribution that these small drainages make to our more recognizable streams is short sighted at best and dangerously negligent at worst. To ignore these tributaries by not maintaining the highest level of scrutiny to the potential toxins and other hazards to downstream water users is not acceptable. The concept of ignoring bacterial, hydrocarbon, heavy metal and other dangerous man caused pollutants is an unacceptable lack of stewardship over a critical life sustaining resource: our water.

Most recently I have enjoyed the small streams contributing to the Wood and Greybull Rivers while helping with the stabilization project at Kirwin; wading, birding and generally enjoying small streams in the Wind River Range above Lander; camping and listening to the water running into Pete Creek on the North Ferris Mountains, hiking and again enjoying the peaceful sound of water trickling in the Copper Mountains north of Shoshoni; watching spring water come down normally dry stream beds out toward the Gas Hills; and just this past weekend seeing and hearing tiny streams below Brooks Lake. These experiences are a blessing in every way. I believe it is the duty of the state to not only monitor but actively protect these water sources from benign neglect.

The fact of the matter is that we all live downstream from water and air and it is a necessity and a duty that we do all we can to assure safety, quality and continued abundance of these life sustaining resources. Please slow down and rethink this plan to abandon these waters.

Department Response: See Changes in Water Quality/Protection of Downstream Water Quality Summary Response.

Cam Eddy, Wilson, WY: Because of access, primary and secondary watershed systems are somewhat irrelevant. It is basic that if “secondary” surface watersheds are re designated to allow a 5 fold increase in e-coli concentrations (read poo in water) it will flow down and into the “primary” systems and contaminate.

Let me state here the incredible economic meaning to perhaps Wyoming’s most valuable individual resource – good clean water. Isn’t the government’s job, isn’t *your* job to safeguard these resources for all of our children? And children’s children?

I’d love to hear from you – and I’d love to know *who* it is who makes these decisions.

Department Response: See Changes in Water Quality/Protection of Downstream Water Quality Summary Response.

Chuck Harris, Grand Teton Medical Clinic: Firstly, thank you again for taking public comments on the DEQ’s recent decision to accept poorer water quality in our watershed streams. If indeed you are the responsible leader of our State DEQ that I believe you are, you will work to overturn the recent DEQ downgrading of water quality for the State.

Of course, poor water quality (and shit) flows downstream...

As a health professional, the risks are clear.

With CLEAN WATER being one of the most precious commodities on our planet today, this is clearly the wrong direction for our State and the DEQ to be travelling.

IF we want the Federal government to stay out of our business, then YOU and WE must be good stewards of OUR common lands and waters.

This is NOT the way.

For further detail and discussion, I ask you to read Mike Koshmrl’s well-researched article in the JH News & Guide last week, July 29th.

PLEASE use your influence and power as our DEQ leader to lead on this issue and keep water standards at the highest level... Not those of a Developing Country. I spend almost all of my free-time exploring our wildlands, and know that already, in watersheds like Cliff Creek, Clause Creek, Sandy Marshall, grazing management is VERY poor, and those watersheds are below standards of current protection.

The USFS and DEQ are currently not enforcing the protections that are in place. We should NOT further relax those standards.

PLEASE do the right thing as the Director of the department responsible for Environmental Water Quality and work to keep WY waters something that we call can be proud of!

Department Response: See Changes in Water Quality/Protection of Downstream Water Quality Summary Response.

Leslie Peterson, Wilson, WY: Though DEQ says that the downgrading will have no practical effect, I don't believe that will be true in the long run. Over time, there will be incursions of one kind or another on a small stream here or there and this reclassification will take its toll.

If nothing else, it is a very sorry statement that we are making to the rest of the country and to the world, about how little we value the quality of our life blood, water. We spend a fortune advertising our tourism resource and then DEQ (the protector of our environment) wipes it all away with the wide press coverage of this debacle.

Department Response: See Changes in Water Quality/Protection of Downstream Water Quality Summary Response.

Kim Wilbert, Riverton, WY: I am writing to express my dismay that the Wyoming DEQ is proposing to downgrade requirements for water quality in creeks throughout the state of Wyoming.

I have lived and recreated in Wyoming my whole life. As a youth, I spent many wonderful hours catching tadpoles, fishing, and wading in small streams on public lands. Whether our family outings were to the Red Desert (places like Harris Slough and Long Creek on Beaver Rim), the Gros Ventre (camped near a wonderful spring above Upper Slide Lake), or a Sunday picnic on the Loop Road above Lander, all the kids inevitably found water to play in. The very idea that these small streams do not deserve the highest standard of water quality protection possible is repulsive to me. The children of the 21st century and beyond are just as likely as we were to be wading, splashing, and having a ball in the thousands of miles of small waterways on Wyoming's public lands.

I spent almost three weeks this summer on extended backpacking trips in Wyoming's National Forest and BLM public lands. When in the backcountry, I frequently take advantage of a pool in a creek to take a quick dip – in fact nothing feels much better after a hard hike. I also continue to enjoy fishing and wading in many wonderful small trout streams. I demand the State DEQ make sure these small waterways all over our state are safe for all these recreational activities.

Water is life, especially in the arid West. Wyoming is the headwaters to three of our country's largest river systems. Why would we want to accept second-class water quality in the small streams that are the sources of the water for most of the U.S.? If we can't expect clean water in the most pristine places in our country, we are failing miserably in stewarding our most precious resource."

Department Response: See Changes in Water Quality/Protection of Downstream Water Quality Summary Response. Also see Recreational Designated Uses and Water Quality Criteria Summary Response.

Daly Edmunds, Regional Policy Coordinator, Audubon Rockies: As a conservation organization, who work focuses on avian species and whose staff engages with the public and members, we are concerned about the DEQ' current sweeping proposal to raise the permissible levels of *E. Coli* in more than 76% of the state's surface waters, including thousands of miles of streams in national forest and other public lands. Should the proposal go forward, surface water quality standards on these streams will be weakened to allow levels of *E. Coli* (fecal indicator bacteria) five times higher than the previous limit.

Audubon Rockies is concerned about the impacts this decision would have on the ecological health of Wyoming's streams and rivers.

Department Response: See Changes in Water Quality/Protection of Downstream Water Quality Summary Response. Also see Recreational Designated Uses and Water Quality Criteria Summary Response.

Andrew and Nancy Carson, Wilson, WY: We write today to object the proposed downgrading of thousands of miles of Wyoming's precious water resources. On August 20, 2014, the Wyoming DEQ issued a decision based on a Categorical Use Attainability Analysis for Recreation that would allow five times the present level of acceptable E. coli in surface waters across the state.

We have been active users of remote waters in Wyoming for over fifty years, and we have raised two children during those years as well. We as a family regularly access and enter waters that would be adversely affected by this action and are appalled that an agency of the state would oversee the degradation of one of our most important and one of our scarcest natural assets.

As a matter of policy state waters should never be downgraded, only improved, and the amount of water in such streams or lakes should have no bearing whatsoever in such decisions. These small streams flow downhill to bigger streams and on the major rivers and thus this flawed proposal would ultimately lead to waters across the state slowly degrading to unacceptable levels common in states with little regard for this vital part of our daily life.

We would add that the negative publicity this move has generated nationwide has not done our tourist industry one bit of good. We have heard from friends and relatives across the country about our 'poopy' streams, and, while there's a certain amount of humor involved, it's anything but a laughing matter for those of us who live here and who frequent the waters in question.

Department Response: See Changes in Water Quality/Protection of Downstream Water Quality Summary Response.

Nick Dobric and Jenny DeSarro, Greater Yellowstone Coalition: Established in 1983, the mission of the Greater Yellowstone Coalition is to protect the lands, waters, and wildlife of the Greater Yellowstone Ecosystem, now and for future generations. A downgrade of any water quality standard, let alone one that applies to recreation activities across the entire state, is an issue of great importance to our organization.

It is our understanding that you relied on the Categorical UAA for Recreation as the technical basis for your decision to downgrade water quality standards on over 76% of the State's surface waters, roughly 87,775 stream miles. A cursory review of the DEQ's UAA and the Designated Uses Web Map reveals that many of the downgraded streams are located in watersheds used by our members for a variety of recreational activities, and we therefore have a significant and direct interest in this issue.

Department Response: See Changes in Water Quality/Protection of Downstream Water Quality Summary Response.

Lloyd Dorsey, Conservation Director, Sierra Club Wyoming Chapter: A downgrade of any water quality standard, let alone one that applies to recreation activities across the entire state, is an issue of great importance to the Sierra Club Wyoming Chapter's members and supporters.

It is our understanding that you relied on the Categorical UAA for Recreation as the technical basis for your decision to downgrade water quality standards on over 76% of the State's surface waters, roughly 87,775 stream miles. A cursory review of the DEQ's UAA and the Designated Uses Web Map reveals that many of the downgraded streams are located in watersheds used by our members for a variety of recreational activities, and we therefore have a significant and direct interest in this issue.

Department Response: See Changes in Water Quality/Protection of Downstream Water Quality Summary Response.

Armond Acri, Jackson, WY: The second issue to address is the public perception that we are allowing degradation to occur in our streams. This is very important as tourism is the second biggest industry in our state. Right after the media reported on the proposed changes I got an email from a friend who lives in the East but has been out to visit several times. He wanted to know "why in the hell are you guys letting them wreck your streams like the rest of the country has done?" Many people come to visit Wyoming because they do not have access to a relatively undisturbed environment. They will not want to recreate in a State that allows even small streams to have 5 times the E. coli levels allowed by the EPA. It is a public relations nightmare that over 76% of all streams in Wyoming will now have lower protection. *For this reason, I propose that the new regulations not apply to streams in Forest Service lands regardless of flow levels.*

Lands administered by the BLM have much different recreational use, so I have less of a problem with reduced protections on streams in those areas. I also recognize many of these streams are seasonal or experience very low flows during late summer and fall. That is where the proposed regulation might make more sense.

Rather than raise the standards to allow more contamination, we need to look at how to change practices to maintain the high quality of all streams in Wyoming, not just ones we can totally immerse ourselves in.

Department Response: See Changes in Water Quality/Protection of Downstream Water Quality Summary Response. Also See Maintaining Water Quality Summary Response.

Franz Camenzind, Jackson, WY: All waters flow downstream, what occurs upstream will show up downstream, even if diluted by increased flows, it is still there. 'Welcome to Wyoming, enjoy our waterways – remember to bring your wet suits, water filters and anti-bacterial creams.'

Department Response: See Changes in Water Quality/Protection of Downstream Water Quality Summary Response.

Jazmyn McDonald, Lander, WY: I urge the Department to review and revise the proposed downgrade of more than 75 percent of our state streams. This is an astounding and ill-advised (quite literally!) proposal.

It is unconscionable to propose reducing the safety of our local streams without a much more thorough study of the actual usage of our state's streams, in particular in areas of great outdoor activity such as our wilderness areas, national forest areas and adjoining federal lands such as the BLM in Park, Fremont, Sublette and Hot Springs counties, all of which get numerous campers and tourists.

Department Response: See Changes in Water Quality/Protection of Downstream Water Quality Summary Response. Also see Recreational Designated Uses and Water Quality Criteria and Maintaining Water Quality Summary Responses.

Gary Cukjati, Director, National Outdoor Leadership School: The waters of the Wind River Range, Absarokas, Wyoming Range, Tetons, Bighorns, and the Red Desert support our professional operations and the personal outdoor recreational pursuits of our staff. NOLS instructors and students frequently use many of the backcountry streams downgraded in the UAA, where we have come to expect a pristine water quality as part of the wilderness experience.

Department Response: See Changes in Water Quality/Protection of Downstream Water Quality Summary Response.

Paige Smith, Cheyenne, WY: It's astonishing and alarming to me just how much of the state's streams have been downgraded as part of a single decision.

With regards to this UAA decision, the Water Quality Division specifically and the Department of Environmental Quality generally has a negative public perception problem. The decision made by the Administrator is being viewed as primarily benefiting the agriculture industry without regard to Wyoming's outdoor recreation industry; an equally important contributor to our state economy. As WDEQ employees, it was always brought to our attention that "perception is reality" to the public or regulated entities and that we should conduct ourselves accordingly to not create such unwanted perceptions.

Department Response: See Changes in Water Quality/Protection of Downstream Water Quality Summary Response.

Len Carlman, Executive Director, Snake River Fund: We support clean, safe water for people to use for outdoor recreation, including water moving in channels that carry six or fewer cubic feet per second; and we have health and safety-based concerns regarding the State of Wyoming's plan to reclassify more than three-quarters of our streams to allow for levels of e. coli that would be unhealthy for swimming, backcountry camper use, and playing.

Our concern is real and practical, not just theoretical. Our supporters periodically get wet in some of these small streams. Their expectation, when in these high country locales, is that the water is clean. They further expect that our state and federal governing agencies are taking reasonable measure to keep the water safe and clean.

Department Response: See Changes in Water Quality/Protection of Downstream Water Quality Summary Response.

Dan Smitherman, Wilderness Society: Please accept these comments on behalf of The Wilderness Society which register our concerns with the DEQ's current proposal to raise the permissible levels of E. coli in more than 76 percent of the state's surface waters, including thousands of miles of streams on national forests and other public lands.

Department Response: See Changes in Water Quality/Protection of Downstream Water Quality Summary Response.

Dan Heilig, Wyoming Outdoor Council: *Impact to downstream users.* The UAA should include a discussion of potential impacts to recreation and other water uses downstream of downgraded segments. Higher permissible *E. coli* levels in tributary streams may cause increased levels of *E. coli* level in segments that retain their primary contact recreation classification. The introduction of additional *E. coli* allowed by the downgrade into primary contact streams has the potential to raise the risk of *E. coli* illness, even if the maximum permissible levels are not exceeded.

Drinking water. The UAA did not discuss the potential impact of the downgrade on municipal watersheds, sole source aquifers, wellhead protection areas and domestic water supplies. It appears likely that higher levels of *E. coli* allowed in downgraded surface waters could present a greater risk to public health and safety.

Public Notice of unsafe waters. As a headwaters state, the public understandably assumes Wyoming's surface waters are safe to swim and play in. However, as a result of the downgrade, many surface waters currently used for primary contact recreation will no longer be protected for that use. Children and other members of the public will of course continue to engage in primary contact recreation activities in streams located more than one mile from schools and towns, and more than one-half mile from established recreation areas. The DEQ has not indicated what, if any, steps it will take to ensure that members of the public, particularly children, are made aware that more than 75 percent of the state's surface waters are no longer protected for primary contact recreation. For example, who will inform the seven-year old girl that ditch flowing through the back of her parent's rural property is no longer safe to play in? Will signs be posted on all downgraded surface waters?

*Effect of *E. coli* impaired streams.* The UAA should identify *E. coli* impaired streams, and discuss the potential impacts of the downgrade on ongoing and future efforts to restore water quality in those impaired streams. It seems reasonable to conclude that allowing higher levels of *E. coli* in tributaries to streams that are currently not meeting *E. coli* standards will undermine or complicate efforts to bring impaired streams back into compliance with water quality standards.

Effect of downgrade on public health and safety. The UAA should clearly explain that the practical effect of the reclassification is that it allows a 500 percent increase in the levels of *E. coli* permissible in streams designated for secondary contact recreation. This significant omission in the UAA should be corrected.

Department Response: See Changes in Water Quality/Protection of Downstream Water Quality Summary Response.

Bobbie Frank, Wyoming Association of Conservation Districts: Nothing in the categorical UAA changes the current water quality conditions, nor does it eliminate protection of water quality. It recognizes that some uses are attainable and some uses are not, just like the other classifications of DEQ's water bodies in the Class 1 through 4 categories.

There's been some discussion about this causing a widespread downgrade in water quality, and just for - in water quality, and just for example's sake, of those water bodies that are currently listed for *E. coli*, four of those were changed to secondary. Of those four, preliminary data indicate that three would meet the secondary standard. And that is preliminary data. I want to stress that. That again indicates that we're not discarding the protection of our water quality, that we're merely recognizing the uses that our various waters are capable of supporting.

Department Response: See Changes in Water Quality/Protection of Downstream Water Quality Summary Response.

Zach Hutchinson, Audubon Rockies: We are concerned about the DEQ's current sweeping proposal to raise the permissible levels of E. coli in more than 76 percent in the state's surface waters, including thousands of miles of streams in national forests and other public lands. Should the proposal go forward, surface quality standards on these streams will be weakened to allow levels of E. coli five times higher than the previous limit.

Department Response: See Changes in Water Quality/Protection of Downstream Water Quality Summary Response.

Hap Ridgway, Elk Creek Ranch: Elk Creek last year had ranchers from 25 states and from three other nations. People make those journeys, spend that money because they're looking for a pristine, primitive, unique experience. I'm concerned about this and how it affects that and how we present that.

Department Response: See Changes in Water Quality/Protection of Downstream Water Quality Summary Response.

Sandy Shuptrine, Teton Conservation District: We understand our fellow conservation district colleagues in other places in the state. We live in different landscapes. And I have to agree with the people that are asking for consideration for that, because in the mountainous areas, our primary interest in our conservation district is recreation, and we agree with many of the comments that have been made to that effect; in fact, probably all of them that deal with recreation.

Part of our mission statement is to through water-based research, we ensure the health, safety and general welfare of the people and resources in our district. We are currently involved in three watershed studies. For us at least, this puts the cart before the horse. If we are to complete these studies and verify what's going on in our area, a lot of time, effort and money will be expended, but meanwhile, we've had a reclassification of all of those areas.

Department Response: See Changes in Water Quality/Protection of Downstream Water Quality Summary Response.

Dan Smitherman, Bondurant, WY: My third concern, and maybe it's because I'm not real bright, but I notice that Kilgore Creek, which I mentioned earlier, is dumping directly into the Hoback River, a section of which is eligible for designation as wild and scenic and is managed under the comprehensive river management plan for the Snake River Basin, wild and scenic by the Bridger-Teton, and I don't fully understand how you can degrade a river that dumps into a body of water that's eligible for wild and scenic designation. And like I said, Cliff Creek dumps into that same river and the upper end of that river has been degraded.

Department Response: See Changes in Water Quality/Protection of Downstream Water Quality Summary Response. Also See Maintaining Water Quality Summary Response.

Dave Hohl, Pinedale, WY: My response on the spur of the moment was that I probably would, but the real key here is that I don't feel that I should have to. My expectation is that water is not to be hazardous to my health.

Department Response: See Changes in Water Quality/Protection of Downstream Water Quality Summary Response.

Dick Inberg, Wyoming Wilderness Association: Of course, I'm very concerned with any proposal to degrade Wyoming's water. And we're kind of a headwater state here -- not kind of, we are a headwater state, and our water quality affects millions of people downstream. We have to keep that in mind. The plan to reclassify or degrade more than 75 percent of Wyoming's streams really doesn't fit that scenario of us thinking about people downstream. True, we are talking low-flow and intermittent streams, streams with less than six cfs average annual flow.

I'm concerned with any proposal degrading the water quality in the state of Wyoming.

Looking at the map, you know, of these areas, man, it's just completely red. We're downgrading all our high-altitude, pure streams. So I just can't go along with that scenario at all.

Department Response: See Changes in Water Quality/Protection of Downstream Water Quality Summary Response.

Cathy Meyer, Lower Wind River Conservation District: We would also like to point out that his categorization does not change the quality of the water. The waters that people recreate in might not meet secondary qualifications or standards and yet people are recreating in it. The UAA will not change the quality of the water.

Department Response: See Changes in Water Quality/Protection of Downstream Water Quality Summary Response.

Jack Berger, Saratoga-Encampment-Rawlins Conservation District: I guess I keep hearing degrading. I don't know why that word keeps getting thrown around. It seems to me that the thought process here tonight is that these streams we're talking about are pure now. I don't -- we've heard about all the people bathing in them. I'm not sure how pure they are at this point.

And it seemed like the thought that they're immediately going to change for the worst if this model is adopted, which there's no reason for them to change. You know, they're still going to be the same streams they are now. So I think there's a little bit of panic in this.

Department Response: See Changes in Water Quality/Protection of Downstream Water Quality Summary Response.

Wayne Garman, Crook County Natural Resource District: Contrary to the claim that the proposed categorical use analysis -- attainability analysis will downgrade water quality, it actually assigns water in a classification based on existing water quantity and water use it actually supports.

Department Response: See Changes in Water Quality/Protection of Downstream Water Quality Summary Response.

Chris Bonatti, Casper, WY: When I was in college and I was learning physics and I was learning other technical subject, we were always taught to consider the units and to look back at our answer to give it a sanity check, and a sanity check on something that results in 76 percent of the waterways in water

being downgraded to secondary status, seems like that violates that test to me. So I'm very concerned about the proposed rules and would urge DEQ to take a second look and allow more public comment.

Department Response: See Changes in Water Quality/Protection of Downstream Water Quality Summary Response.

Shaun Sims, Wyoming Association of Conservation Districts: I hear a lot of downgrading. We don't feel this is a downgrade. This is getting the proper use attainability that that stream can support.

We're all in favor of clean water. We are not asking to degrade. We are not wanting DEQ to degrade.

Department Response: See Changes in Water Quality/Protection of Downstream Water Quality Summary Response.

Jim Magagna, Wyoming Stock Growers Association: The other thing, I think it's important to recognize that the classification itself does not change the quality of a single water. It simply puts it in a class. Whatever out there is out there is out there. There may be factors taking place, both natural and human, that are changing the classification -- the quality of these waters.

Department Response: See Changes in Water Quality/Protection of Downstream Water Quality Summary Response.

Mary Lou Morrison, Casper, WY: I have been listening very carefully and learning and hearing new vocabulary about the water issue of which this is all about. But what I am very concerned with, and I guess I am protesting emphatically to you all, the DEQ, lowering 76 percent of the state's streams, and the fact that there's only been this public hearing, this one, and I'm sure not being involved in anything other than supporting and remembering what this state was like when I moved here in 1960.

I moved here from Kansas, and all of my life, living in Kansas on a wheat farm near Wichita, Kansas, I had read the funny papers, the Lone Ranger, and listened to him on the radio -- no TV, for Pete's sake, of course -- and said I want to go to Wyoming someday.

So I did come here in 1960 to teach art. I was a traveling elementary art teacher and then eventually did teach at Kelly Walsh when it was built.

And I married a Wyoming native in 1963 and who had grown up here in Casper, and we did much backpacking, hiking in all of the mountain ranges of the awesome beauty in the Wind Rivers, the Snowy Range, the Bighorns. And he also was in some of that time -- he's now deceased, but he was a guide around Dubois, a game guide for a game farm, or a game ranch.

Anyway, I just -- I'm very concerned, like I said. I'm being educated by listening, but I am so concerned about lowering the water qualities, because on these backpacking and wilderness trips, we were able - - I just remember being able to drink out of any of the mountain streams in the mountains where we were going and, of course, that, of course, has undoubtedly changed in some regions and some areas.

But it bothers me, and I guess I just don't support downgrading any of this, any of the quality, allowing it to be -- to be carrying E. coli or, to me, being polluted. I don't know what those two words, if that's interchangeable, but I definitely am supporting the -- I'm a member of the Wyoming Wilderness Association. I support the Sierra Club and the Wyoming Outdoor Council all of these years and just

because Wyoming has always been so awesome. So let's keep that water in those higher mountain ranges especially pure as it is or as it has been.

Department Response: See Changes in Water Quality/Protection of Downstream Water Quality Summary Response.

Ted Lapis, Public Land User Committee: And I spent a long time in Wyoming learning about the ins and outs of water policy and cattle. I moved here in November '80 and I was a frequent visitor before that. But policies are a delicate thing. They're used as a management tool to reduce the work that's involved in making decisions, but I'll speak from a marketing point of view.

My definition of marketing is getting your unfair share, and when you have a good message, you can achieve your unfair share of a good or a service by being smart about it, but the way that this policy is going to be interpreted across the nation is easily viewable by just looking on the Internet, and if you have a too well worn profile with Google, I would suggest you start in the library so you're starting anonymously and look at how this has been portrayed in media across the country, and it's really giving Wyoming kind of a -- not such a great profile in terms of tourism, which is an important industry.

Department Response: See Changes in Water Quality/Protection of Downstream Water Quality Summary Response.

Perry Hayes, Lower Wind River Conservation District: I'm from the Lower Wind River Conservation District. I'm one of the board members from Riverton.

After hearing a lot of the comments that were done -- and we appreciate your time and having this meeting -- I just want to do some clarification, I guess, would be my best way of putting it that until at the end of the night here with all the comments that were given by such -- so many speakers tonight, the E. coli thing was left at the end of the comments. And it was really -- that's one of the main factors that we have to look at is a key factor for these as primary and secondary, and the secondary, as you had commented earlier, doesn't mean that it's downgraded any more, but what it is -- actually, you can't see it in the water.

So what it's doing is it's taking some of these that take so many man hours, money, resources and time to categorize, it's changing them. Even though they still have water flow to them and stuff, it gives the people an opportunity to put their resources to something else, and it gives us a chance to use our resources in our districts and stuff especially to focus on other ones that are more demanding. And even though they're being placed into a secondary category, it's not suggesting that we are taking less time and assets towards those. We've already categorized those as well. It's just they don't demand as much time as some of the other ones.

And I think that is one point that was kind of divulged at the end that might have been a key point to ask some of the speakers earlier on in the night that were giving negative points toward everything that if they know all the criteria that goes into looking at these waters, E. coli is one of the main factors.

And I think some of the people that actually spoke that were just citizens I think are unaware of some of the circumstances and what the resources and what the categorizations are for doing these things, and so I think if that would have been brought up or if a keynote question would have been given to them before they stepped down from their presentation, I think ultimately, it would have gave a

chance for people to acknowledge and see if they knew as much as what they were standing up here and trying to defend so prominently.

There could be a potential for that and there is in certain standards and that's what I think when a comment that you had provided for one of the speakers was can you seen the E. coli in a primary or a secondary, there's no real visible site-to-site area where you're going to be able to say, "Oh, E. coli is in some spot or it's in some area." You have to do some further testing in those. And that's what a lot of testing and time and money and resources that all the conservation districts have put in to help with this model is showing is that there is E. coli in some of the waters, and it's more prevalent in certain areas than other and that's why we need to maintain the vegetation and try to control some of the areas.

But on the same token, we are not downgrading these in respect to them being less of an issue, it's just there's other one that are more of a primary factor that need more attention than some of the other ones. But we are still -- our main focus is taking care of all the waterways that are throughout the state.

Department Response: See Changes in Water Quality/Protection of Downstream Water Quality Summary Response. Also see Rationale for Modifying Recreation Designated Uses Summary Response.

4.4 Maintaining Water Quality

Connie Wilbert, Associate Organizer, Sierra Club Wyoming Chapter: Streams in designated wilderness areas, wilderness study areas and other remote backcountry areas should not be reclassified. Water quality in these areas should be maintained at the highest level.

Department Response: See Maintaining Water Quality Summary Response. Also see Class 1 Waters Summary Response.

Carlin Girard, Water Resource Specialist, Teton Conservation District: There are multiple routes by which some of the concerns listed within this letter could be addressed by WDEQ. A simple strategy to reduce conflict is allowing individual Conservation Districts to accept or deny the Categorical UAA. Or, WDEQ could exempt Teton County from this analysis, due to our unique public land uses. I mention these two options, because we currently do not have waters that are impaired due to E. coli, and therefore are not have issues the existing recreational use contact standards, which are obviously troublesome in other Districts.

We understand that a considerable amount of time and energy has been allotted to this work, but hope that additional time be spent to assure that Northwestern Wyoming water resources remain under a high level of protection, to ensure our user's health and welfare.

Department Response: See Maintaining Water Quality Summary Response. Also see Changes in Water Quality/Protection of Downstream Waters Summary Response.

Sandy Shuptrine, Chair, Teton Conservation District: Our district has primary interest in recreational uses, lacks widespread cattle grazing or industrial uses, and DNA source tracking studies have shown wildlife, human and pets as significant contributors to E. coli pollution. This situation makes us

somewhat different from many, but not all, other conservation districts. For this reason, I believe it appropriate and reasonable to request our exclusion from the model that is proposed.

Please do not include the Teton Conservation District in the proposed model for establishing water quality standards. Should our studies prove otherwise, we shall revisit this request with you. Meanwhile, our district would be pleased to offer collaborative collection of water samples for DNA sourcing of pollutants, along with sharing our already extensive DNA library, for your information base as well as our own. TCD Supervisors suggest that conservation districts might assume the lead in requesting and 'proving' potential reclassifications, should you choose to utilize the model currently proposed.

Once again, I appreciate your attention to these interests and regret any opportunities missed, previously. This letter has some, but not unanimous, support of TCD Supervisors regarding the desirability of the proposed UAA model. Whether starting from highest water quality or having to prove unacceptable pollution, with statutory restrictions on data collection, in order to classify a stream as a primary watercourse (the apparent choices), we all seem to agree that the UAA process is difficult.

Department Response: See Maintaining Water Quality Summary Response.

Franz Camenzind, Jackson, WY: *Instead of the public having to provide latitude and longitudes of each and every stream they are familiar with, I urge the Wyoming Department of Environmental Quality to reinstate the Primary Designation to at least all National Forest waterways and particularly, all National Forest Wilderness area streams, regardless of their flow volumes.*

Department Response: See Maintaining Water Quality Summary Response. Also see Class 1 Waters and Approach for Identifying Waters for Secondary Contact Recreation Summary Responses.

Rob Davidson, Council for the Bighorn Range: The Council asks that all waters managed to achieve the objectives of the Wilderness Act of 1964 or the Wild and Scenic Rivers Act of 1968 and should remain designated as primary contact recreation use in order to maintain existing water quality in these areas. A change in recreation use designation of these waters from primary to secondary would conflict with the Congressional mandates under the Wilderness Act of 1964 and the Wild and Scenic Rivers Act of 1968. This would be in conflict with the 1985 and 2005 Resource Land Management Plan and the West Ten Sleep Management Plan 2013 in the Bighorn National Forest. This management direction applies to congressionally designated wilderness waters and their tributaries, designated Wilderness Study Areas (WSA) waters, and the Forest Plan Recommended WSA wilderness waters. Additionally, this would also apply to congressionally designated wild and scenic rivers and their tributaries, as well as Forest Plan eligible and suitable rivers.

A UAA in the West Ten Sleep Management Area in the Bighorn National Forest showed unacceptable levels of E.Coli in primary contact recreation and allowed the Bighorn National Forest to address the human created health issue in the Wilderness without having impose onerous regulation or closure of the area.

The designated Wilderness and wild lands of Wyoming principal human use is for visitation and passage. Whenever possible is water for consumption, bathing, swimming, and just the comfort of immersion.

Department Response: See Maintaining Water Quality Summary Response. Also see Class 1 Waters Summary Response.

Daniel Jirón and Nora Rasure, United States Forest Service: We recognize that the finish line is in sight and would like to respectfully request changes to the Rec Use UAA. We ask that all waters managed to achieve the objectives of the Wilderness Act of 1964 (P.L. 88-577) or the Wild and Scenic Rivers Act of 1968 (P.L. 90-542) remain designated as primary contact recreation use in order to maintain existing water quality in these areas. A change in recreation use designation of these waters from primary to secondary would conflict with congressional mandates under the Wilderness Act of 1964 (P.L. 88-577) and the Wild and Scenic River Act of 1968 (P.L. 90-542) and related policy and resource management planning documents. This management direction applies to congressionally designated wilderness waters and their tributaries, designated Wilderness Study Areas (WSA) waters, and Forest Plan recommended wilderness waters. Additionally this would also apply to congressionally-designated wild and scenic rivers and their tributaries, as well as Forest Plan eligible and suitable rivers. In all of these above named areas, the Forest service is directed by Congress or by Land Management Plan direction to protect water quality.

Department Response: See Maintaining Water Quality Summary Response. Also see Class 1 Waters and Changes in Water Quality/Protection of Downstream Waters Summary Responses.

Lisa McGee, Jackson, WY: The model didn't screen out Class I low-flow waters in wilderness areas, nor did it screen out low-flow stream segments designated and/or eligible under the Wild and Scenic Rivers Act. That these streams have been improperly included in the downgrade is telling. Despite clear direction that Class I waters – by nature of their status – cannot be downgraded, and despite the fact that DEQ cannot permit degradation of water where “water quality” has been identified as an “outstandingly remarkable value” under the Wild and Scenic Rivers Act, the model nevertheless encompassed – and downgraded – these recreational waters.

Department Response: See Maintaining Water Quality Summary Response. Also see Class 1 Waters Summary Response.

Gary Cukjati, Director, National Outdoor Leadership School: The National Outdoor Leadership School respectfully requests the Wyoming Department of Environmental Quality (WDEQ) to withdraw the Categorical Use Attainability Analysis (UAA), or to remove administratively-defined wildlands from the scope of the rule. This would include removing streams in Wilderness, Wilderness Study Areas, Lands with Wilderness Characteristics, Roadless Areas, Areas of Critical Environmental Concern, Special Recreation Management Areas, and candidate and current Wild and Scenic streams and rivers, and their tributaries, from the scope of the Categorical UAA.

We respectfully request WDEQ to withdraw the Categorical UAA. Should the Categorical UAA go forward with the same original intent, we recommend that all USFS and BLM Wildernesses, Roadless Areas, Areas of Critical Environmental Concern, Wilderness Study Areas, Lands with Wilderness Characteristics, Special Recreation Management Areas, and candidate and current Wild and Scenic streams and rivers, and their tributaries, be removed from the scope of the downgrade. These areas are expected by visitors to be pristine in nature, and the waters within them should be held to the highest standard of purity and remain primary contact recreation waters. These public lands are wild places where visitors frequently see out small streams for relief from the heat, recreation, bathing, and swimming among other uses.

NOLS is likely the largest commercial recreation user of public lands containing streams downgraded by the Categorical UAA. We are proud to teach and practice the highest standards of public land stewardship. NOLS has worked tirelessly to preserve the high quality of lands and waters where we operate, and we implore WDEQ to work with us to maintain these resources to the highest standards and preserve Wyoming's great natural heritage. We respectfully request WDEQ to redact the Categorical UAA, or to remove Wyoming's public wildlands and backcountry areas from its scope.

Department Response: See Maintaining Water Quality Summary Response. Also see Class 1 Waters and Changes in Water Quality/Protection of Downstream Waters Summary Responses.

Len Carlman, Executive Director, Snake River Fund: Our request with respect to your proposed regulatory action is simple. *Please exempt all water in the Snake River watershed in the State Of Wyoming from the proposed water quality degradation allowance portended by the "Categorical Use Attainability Analysis for Recreation."* We understand you may prefer to receive a listing of particular streams of interest rather than a broad brush watershed designation. One of our basic points, alluded to above, is that high water quality standards that befit the small streams in our areas of concern is genuinely held at a broad, inclusive level. It would be our mistake to declare this stream or that stream of particular interest, and leave out any number of unspecified streams. Public use and recreation, and public exposure to better or poorer water quality, occurs diffusely, spontaneously, intermittently, and, cumulatively, foreseeably *throughout* our watershed. This makes our watershed scale exemption request appropriately specific to the regulatory question presented.

- 1) Water quality and flow are key components of the federal Wild & Scenic Rivers Act (WSRA, Public Law 90-542, 16 U.S.C. 1271 et seq.). The WSRA mandates protection of rivers in at least two ways. First, designated rivers must be kept free of additional impoundments; and second, water quality in designated rivers, as of the date of federal congressional designation, (date of Snake Headwaters statutory enactment, citation below – March 30, 2009), must be maintained. In plain terms, the WSRA sets a non-degradation standard. The Wyoming DEQ-WQD proposed Categorical UAA regulation, on the other hand, would expressly allow water quality degradation. The existing federal standard and the proposed state standards occupy the same field of regulatory influence, and they are not in sync. When that happens, and where federal standard is more stringent than the state standard, the federal standard prevails. Additionally, those streams in the Snake River watershed on the Bridger-Teton National Forest identified as being *eligible or suitable* for future WSRA designation must be protected from anything that could preclude such future designation.
- 2) The Bridger-Teton national Forest, (hereafter B-TNF) has not yet completed the statutorily required adjudication of streams protected under the Craig Thomas Snake River Headwaters Legacy Act of 2008 (Public Law 111-11, a statute of specific designation secondary to 16 U.S.C. 1271). That adjudication includes determining the water quality and quantity necessary to protect each "outstandingly remarkable value" (ORV) that distinguishes each designated river segment. To preemptively allow an international degradation measure, as now proposed by the Wyoming Department of Environmental Quality, Water Quality Division, is contrary to the WSRA and implementation duties that Congress has bestowed on the United States Forest Service. This is ill-advised. More to the point, it's wrong.
- 3) In order for a river to be considered as a candidate for consideration for future WSRA designation, a river segment must be free-flowing and possess one or more Outstandingly Remarkable Values (ORVs). Thus, eligibility analysis consists of an examination of the river's hydrology, including any man-made alterations, and an inventory of its natural, cultural and recreational resources. In order to be assessed as outstandingly remarkable, a river-related value must be a unique, rare, or exemplary feature that is significant at a comparative regional or national scale. The majority, if

not all, identified segments within the B-TNF Wild & Scenic River (WSR) system possess a Recreation ORV management mandate/focus that identifies water & shore-based recreation as an important and existing resource value. That means human recreation must be presumed to occur in the small streams on the B-TNF that might be allowed to degrade per the DEQ's proposed UAA, and the health and safety of the recreating public needs protection.

- 4) Any segment listed in the Nationwide Rivers Inventory, (a 1979 Presidential Directive that includes over 3,400 segments of streams, hereafter NRI), requires the following: "all federal agencies must seek to avoid or mitigate actions that would adversely affect one or more NRI segments," (<http://www.nps.gov/ncrc/programs/rtca/nri/index.html>). Water quality in candidate streams is something that the US Forest Service, including the Bridger-Teton National Forest, is charged with protecting pursuant to their Forest Plan, the WSR, and Forest Service Manual. The USFS has no leeway in deciding which streams to keep protected or allow to be degraded. They are required to maintain high water quality in all such waters. That means the conflict between the State of Wyoming's proposed pro-degradation rule and the United States government's stewardship and non-degradation duty extends to all NRI waters, and the more stringent federal standard again prevails over the proposed less-stringent state standard.
- 5) The United States' water quality protection duty includes tributaries ("immediate environments" as set forth in section 1(b) of the WSR) to be designated Wild & Scenic stream segments which have by state legislation already been included as secondary streams. Put another way, the tributaries to the WSR designated rivers and streams are beneficiaries of the federal protection afforded those protected downstream waters. The proposed pro-degradation Wyoming DEQ rule is in conflict with this preexisting, and legally superior, duty. The WSR precludes the managing federal agency from allowing an action that would unreasonably diminish the water quality in a section river that is upstream from any WSR designated reach of water. Unless the DEQ-WQD proposed rule exempts the waters in the Snake River drainage above the Wyoming Highway 89 bridge at Alpine, Wyoming, the United States will be pushed into a legal fight with the State of Wyoming. As previously noted, the United States is likely to win that fight.
- 6) We respectfully request that moving waters identified in the Craig Thomas Snake River Headwaters Legacy Act of 2008, and tributaries to those protected waters, extending to their sources, be expressly exempted from the proposed rule. Please also exempt from the jurisdiction of any pro-degradation state rule all streams identified and listed or required in the NRI or the B-TNF Forest Plan. Please also exempt all moving waters in Wyoming in federally designated Wilderness Areas, Wilderness Study Areas, and areas now being managed to purposefully retain their eligibility for future addition to the National Wilderness Preservation System.

Thank you for sparing us and yourselves the headaches of seeking an exemption from the application of this proposed regulation inside Yellowstone and Grand Teton National Parks. On the strength of public health and safety considerations, as well as the legal concerns raised in this letter, would you please extend that exemption to all water flowing in the Snake River watershed in the State of Wyoming? We would be grateful if you would.

Department Response: See Maintaining Water Quality Summary Response. Also see Class 1 Waters and Changes in Water Quality/Protection of Downstream Waters Summary Responses.

Dan Heilig, Wyoming Outdoor Council: *Wild and Scenic Rivers.* The downgrade of designated and eligible wild and scenic river segments and their tributaries may interfere with the Federal Land Managers' responsibility to protect the water quality and related "outstandingly remarkable values" of these streams. We recommend that the DEQ consult with the Bureau of Land Management and Forest

Service to consider the potential impacts to designated and eligible surface waters, and include the analysis and findings in a revised UAA.

Department Response: See Maintaining Water Quality Summary Response.

Gary Wilmot, Wyoming Outdoor Council: Take wilderness out of the -- or take wilderness areas out of the model completely. Streams in the wilderness shouldn't be reclassified by this rule. And that should extend to wilderness areas, wild and scenic river segments, and their tributaries, too.

Streams near recreational areas on BLM lands should also be designated as primary contact recreation. The National Continental Divide Trail is a great example of a corridor where the highest standard for recreational waters is essential. Consider taking high country areas out of the model, especially on national forests.

Department Response: See Maintaining Water Quality Summary Response. Also see Class 1 Waters Summary Response. Also see Approach for Identifying Waters for Secondary Contact Recreation.

Evan Reimondo, National Outdoor Leadership School: Should the categorical UAA go forward with the original intent, we recommend that the US Forest Service and BLM lands, including wilderness, roadless areas, areas of critical environmental concern, wilderness study areas, lands with wilderness characteristics, special recreation management areas and candidate and concurrent wild and scenic streams and river and their tributaries be removed from the scope of the downgrade. These areas are expected by visitors to be pristine in nature, and the waters within them should be held to the highest standard of purity and remain primary contact recreation waters.

We implore the DEQ to work with us and maintain these resources at the highest standards as a part of Wyoming's great natural heritage.

Department Response: See Maintaining Water Quality Summary Response. Also see Class 1 Waters and Changes to Water Quality/Protection of Downstream Water Quality Summary Response.

Christine Lichtenfels, Lander, WY: So I would ask that you take all wilderness areas out of that. That's an area that I think most Wyoming people feel like you should be able to freely roam and have some expectations of recreation that things are primary recreation. And then, of course, the various other types of wilderness areas, like wilderness study areas, wild and scenic rivers, or rivers that flow into wild and scenic rivers, they should be held at that higher level, too.

Department Response: See Maintaining Water Quality Summary Response. Also see Class 1 Waters and Changes to Water Quality/Protection of Downstream Water Quality Summary Responses.

Sandy Shuptrine, Teton Conservation District: And everybody agrees that dealing with UAA is difficult, but we do request that our conservation district, if adjustments are not made, that our conservation district be removed from the model and the we operate under the old way of being, which much better suits our interests and our public.

Department Response: See Maintaining Water Quality Summary Response. Also see Changes to Water Quality/Protection of Downstream Waters Summary Response.

Dick Inberg, Wyoming Wilderness Association: I am President of the Wyoming Wilderness Association Guidance Council, and I'm representing the Wyoming Wilderness Association. My remarks that I make will primarily apply to wilderness areas, wilderness studies areas, and our wildlands in forest and BLM.

My particular focus and my main concern is the degradation of our water within our wilderness areas, wilderness study areas, both BLM and Forest Service, and our forest wildlands.

Our Wyoming wilderness and wildlands are valued for their pristine environment and water throughout the country. Do I use the water classified as secondary contact or low-flow water? You bet I do, as my recreation is in the wilderness and wild areas, and that's where I hang out, and I've had 20 years' experience or 60 years' experience traveling both by foot, horseback and muleback and whatever in our backcountry. Cooking, washing, cleaning fish and game, I've used all that. I use water for all that in the backcountry, and a lot of it are secondary streams.

So I think that in our wilderness areas specifically, our wilderness study areas and that, we do need a reclassification of these streams.

Department Response: See Maintaining Water Quality Summary Response. Also see Changes to Water Quality/Protection of Downstream Waters and Recreational Designated Uses and Water Quality Criteria Summary Responses.

Rob Davidson, Council for the Bighorn Range: The Intermountain Region of the USDA Forest Service, and Region 2, the Rocky Mountain Region, submitted to this Council new comments on the UAA, and this Council actually supports it. What it is it has asked that all waters managed to achieve the objectives of the Wilderness Act of 1964 as Public Law 8857 are the waters managed to achieve the objectives in the Wild and Scenic Rivers Act of 1968 remain designated as primary contact recreation use in order to maintain existing water quality in these areas. A change in use of these -- designation of these water from primary to secondary would conflict with the congressional mandates under the Wilderness Act and the Wild and River Scenic Act (sic).

Department Response: See Maintaining Water Quality Summary Response. Also see Class 1 Waters Summary Response and Changes to Water Quality Summary Response.

Connie Wilbert, Sierra Club Wyoming Chapter: We echo what has been expressed previously, which is that streams in designated wilderness areas, wilderness study areas, inventory roadless areas, areas of critical environmental concern, resource natural areas, all those kind of more remote backcountry areas should not be reclassified. There's no reason to do it and there's lot of reasons not to do it. People use those streams all the time for immersion activities.

Department Response: See Maintaining Water Quality Summary Response. Also see Class 1 Waters and Recreational Designated Uses and Water Quality Criteria Summary Responses.

Ted Lapis, Public Land User Committee: But the US Forest Service has reconsidered their opinion, and I do have their remarks that came out yesterday, and their objectives to manage for the Wilderness Act and the Scenic Rivers Act is something that's a certain change in their policy.

Department Response: See Maintaining Water Quality Summary Response. Also see Class 1 Waters Summary Response.

4.5 Approach for Identifying Waters for Secondary Contact Recreation

Ty Cook, Jackson, WY: The recreation use form that DEQ is using to accept written comments is burdensome and amounts to a brief technical report which most people do not have the ability or time to complete. This is impossible considering most of us concerned with this status downgrade have visited dozens, maybe hundreds of these streams. Memories of experiences in those pristine bodies is evidence enough of their importance.

Department Response: See **Approach for Identifying Waters for Secondary Contact Recreation Summary Response**. Also see **Recreational Designated Uses and Water Quality Criteria Summary Response**.

Mara Gans, Lander, WY: You have made faulty assumptions about recreational use of low flow streams for contact recreation in your proposal. I can attest that on our hikes and trips, our family often got off trail and recreated and camped away from major trails and big rivers. In fact, my parents often sought out smaller streams that we could play in so we'd be safe from more dangerous, fast flows. Also, small streams can make for some shallow pools that are great for kids to wade and splash in. On hot days, we'd immerse our feet and heads in pools to help cool off or just sit in them. In general, water is a great attractant for kids and I remember spending lots of time with my brothers wading and digging and splashing in general in small pools. These little streams were also great for trying to build dams in and make the water back up behind a mud and stick contraption. What kid hasn't done this and then delighted in watching the dam break and release everything?

All these activities expose kids to the waters of these small streams and these waters need to be protected at the highest level for primary contact recreation. Children are at more risk to E. coli and to other harmful bacteria that it is used to predict.

I do not believe that the responsibility should be on us – the general public – to prove to you – the agency – that some low-flow streams have had primary contact recreation in the past and thus should be removed from your down-grade list. If I can list one stream that this applies to, and provide you the locational data on it, that means that there are hundreds of other streams that have or could serve this use in the future. You should not downgrade streams simply because someone hasn't stepped forward and told you about their use for contact recreation. You should protect the clean waters of this state to the highest level, unless you – the agency – can show us that those particular waters could not legitimately be used for contact recreation (or returned to that use). The burden of proof should be for exceptions to the highest standard and not as you have structured this rule change. The EPA website clearly states that the purpose of the Clean Water Act is “to restore and maintain the chemical, physical, and biological integrity of the nation’s waters.”

Department Response: See **Approach for Identifying Waters for Secondary Contact Recreation Summary Response**. Also see **Recreational Designated Uses and Water Quality Criteria and Changes in Water Quality/Protection of Downstream Waters Summary Responses**.

Tim Hudson, Lander, WY: Along with other families, my wife and I take our son and his young friends into the backcountry in the Wind River Mountains and the Red Desert every summer and fall. We are always much farther from a town, campground, or trailhead than one mile. And anywhere there is water, the kids congregate. They build dams. They move rocks. They splash each other and themselves, flop on their bellies, pour water over their heads. There is every chance that some of that

water gets ingested. And generally speaking, that's not something I've worried much about when I'm miles deep in a designated wilderness area in the Winds.

Department Response: See **Approach for Identifying Waters for Secondary Contact Recreation Summary Response**. Also see **Recreational Designated Uses and Water Quality Criteria Summary Response**. Also see **Changes in Water Quality/Protection of Downstream Waters Summary Response**.

Alexander May, Laramie, WY: My family, friends and I regularly recreate on and in low flow streams more than a mile from towns and more than a half-mile from developed campgrounds and trailheads. I ask that you consider this when assessing the rule and adjust it accordingly. I am an avid backcountry fly fisherman, hunter, and hiker. I frequently come into contact with this type of water and downgrading streams will negatively impact all consumptive and nonconsumptive users of these watersheds.

Department Response: See **Approach for Identifying Waters for Secondary Contact Recreation Summary Response**. Also see **Recreational Designated Uses and Water Quality Criteria Summary Response**. Also see **Changes in Water Quality/Protection of Downstream Waters Summary Response**.

Linda Ransom, Evansville, WY: My family, friends and I regularly recreate on and in low flow streams more than a mile from towns and more than a half-mile from developed campgrounds and trailheads. We have enjoyed fishing, hiking, wading, splashing and other outdoor activities, which usually always takes place away from key tourist locations. Please don't assume that people will not walk more than a half-mile from a trailhead or a mile from a population center to play in the water. Thousands of people hike for miles and miles in Wyoming every year, especially during the summer months.

If you are really trying to address low flow waters, make the rule more about low flow waters. Set the standard below the current mark of 6 cfs, this would help prevent unintended downgrades. We must protect the wilderness areas, and maintain the highest standards for water quality. Flow data should be used from seasonal summer months, when outdoor recreation is at its peak.

Department Response: See **Approach for Identifying Waters for Secondary Contact Recreation Summary Response**. Also see **Recreational Designated Uses and Water Quality Criteria, Changes in Water Quality/Protection of Downstream Waters, and Class 1 Waters Summary Responses**.

Karen Mott, Lander, WY: The reclassification of three quarters of our states streams allowing for significantly higher levels of E. coli levels concerns me. I often use some of the streams being changed for wading and cooling off after a hike.

I feel recreation in the areas where I go is at its highest in the summer months. Stream runoff is highest in early spring and summer from snow melt. So if you are trying to address low flow water, how about making the rule about low flow water. Setting a mark below 6 cfs the current standard would make sense and help prevent unintended downgrades.

I feel recreation in our state is a huge revenue source. Tourists visit and go into our mountains and deserts. We don't need them going to Montana or Idaho because our water makes them sick. By keeping our waters clean we help ourselves and are better stewards of our mountains and streams.

Please consider all options to maintain our streams and mountains. One size fixes don't fit all things.

Department Response: See Approach for Identifying Waters for Secondary Contact Recreation Summary Response. Also see Recreational Designated Uses and Water Quality Criteria and Changes in Water Quality/Protection of Downstream Waters Summary Responses.

Jeff Troxel, Cody, WY: Wyoming's water is its most valuable resource and this re-classification represents a move in the wrong direction. It signifies that we have lost significant ground in the effort to protect Wyoming's water, and that a lower standard for water quality is somehow "acceptable." This is the wrong approach.

My family regularly recreates on and in low flow streams more than a mile from towns and more than a half-mile from developed campgrounds and trailheads. I live in Wyoming because of things like clean water. I ask that you consider this when assessing the rule and adjust it accordingly.

Department Response: See Approach for Identifying Waters for Secondary Contact Recreation Summary Response. Also see Recreational Designated Uses and Water Quality Criteria and Changes in Water Quality/Protection of Downstream Waters Summary Responses.

Jennifer Hinkhouse, District Manager, Campbell County Conservation District: In 2010 the CCCD was asked to assist in field verification of WDEQ's UAA model to assess its accuracy. These sites were chosen at random throughout the state. In total the conservation district throughout the state performed field verifications on approximately 720 sites. These sites were not always readily assessable. In Campbell County the CCCD personnel visited 28 sites, traveled 2,000 miles and spent approximately \$5,000 in staff time. As CCCD highlighted in our comments from September 30, 2013, there is only one stream that through the UAA model would change from primary to secondary recreation in Campbell County, Middle Prong of Wild Horse Creek. This creek has been on the WDEQ 303(d) list as impaired for E.coli since 2006. With this proposed designation change pending final approval from the EPA, Middle Prong of Wild Horse Creek would be removed from the WDEQ 303(d) due to the fact it has never exceeded the 630 col./100 mL limit. It is important to note that it does not contain enough water to recreate nor does it have public access.

Campbell County currently has listed streams or stream segments on Donkey Creek, Stonepile Creek, Middle Prong of Wild Horse Creek and Little Powder River. All of these streams are on the states 303(d) list for E.coli impairment. Some of these waterbodies are in close proximity to schools, recreational areas, and even travel through the heart of Gillette. CCCD applauds the UAA models elevated level of protection, which automatically includes these streams ephemeral or not, as they are easily accessible by the general population. These waterbodies have an increased chance of coming into contact with general public, and thus should be our main focus.

Department Response: See Approach for Identifying Waters for Secondary Contact Recreation Summary Response.

Michelle Huntington, District Manager, Converse County Conservation District: The Converse County Conservation District strongly supports DEQ's final UAA for Recreation. The UAA takes a logical and comprehensive approach in the fine scale identification of streams in the state having the potential of supporting primary contact recreational activities. Primary contact recreation or primary waters are those waters where recreational activities would be expected to result in full immersion and/or ingestion of the water, any other waters will be considered secondary contact recreation waters. In

addition, waters that lack sufficient flows to support primary contact recreation (i.e. ephemeral, small intermittent and small perennial streams), and/or with a mean annual flow of less than 6 cfs are designated as secondary contact recreation waters. These designations provide users a more accurate depiction of where primary and secondary contact waters exist in the state.

The rationale and methods used by DEQ are defensible and field verified by both DEQ staff and Wyoming Conservation Districts, including Converse County Conservation District. Together 871 field surveys validated the findings and supports DEQ's identification of primary and secondary contact recreation waters. Converse County Conservation District supports the findings based on numerous field verifications and believes these to be comprehensive and defensible to those who may question the UAA's determination.

We strongly support DEQ in the development and implementation of this UAA for Recreation. We believe the approval of this strategy will benefit the general public and the state by providing a more accurate depiction of areas meeting the definition of primary contact recreation waters and through the decreased need of future UAAs on streams having very little to no likelihood of being primary contact water.

Department Response: See Approach for Identifying Waters for Secondary Contact Recreation Summary Response.

Wayne Garman, Chairman, Crook County Natural Resource District: Many of the waters being changed to secondary contact recreation, in addition to being remote, are low to zero flow waters. Outside of potential human recreational waste impacts, these waters will have little human waste contributions to water systems downstream. Under criteria developed by DEQ, waters that are near public schools, parks, and areas that are more densely populated that are subject to more human waste impacts, were designated for primary contact recreation. We believe those waters are largely designated for primary contact due to their vicinity to municipal areas and the increased likelihood for potential health impacts compared to waters in remote areas that typically have little or no flow.

It is important to note that the UAA determines, based on a set of criterion, if a particular use can be supported.

In 2010, the District worked collaboratively with DEQ to conduct field verifications on 25 randomly selected sites in order to provide sufficient level of data points to verify the accuracy of the UAA model.

We feel it should be noted that other states have adopted the same type of approach in recognition that the standard was developed based on data from high recreation use beach areas and did not account for smaller, intermittent and ephemeral streams. In fact, Colorado has the same secondary standard in place as being proposed by Wyoming.

We believe the criteria utilized by the Department in determining primary versus secondary contact recreation uses is appropriate and reflects the intent of the standard and meets EPA's expectations. The Staff and Supervisors of the CCNRD encourage the EPA to approve Wyoming's Categorical Use Attainability Analysis for designation of recreation uses. There has been a tremendous amount of work put into this Categorical UAA by many across the state, and in consultation with EPA.

Department Response: See Approach for Identifying Waters for Secondary Contact Recreation Summary Response.

Gary and JoAnn Zakotnik, GZ Livestock: We support the Wyoming Department of Environmental Quality's Categorical Use Attainability Analysis for recreation uses on Wyoming's waters. As we understand it the DEQ and local conservation districts did extensive work using on the ground field techniques, technology, and GIS to make this determination. As the vast majority of streams in Wyoming do not lend themselves to "immersion, full body contact, or frequent use of the water by children" due to low flows and lack of ready accessibility, use of this model represents a reasonable approach to stream classification and is a wise use of taxpayer's money.

We feel there is ample opportunity for a stream to be upgraded if specific evidence is submitted.

Please use the available resources to address areas where there is a significant concern.

Department Response: See Approach for Identifying Waters for Secondary Contact Recreation Summary Response.

Jim Hellyer, Lander, WY: Our ranch is located south of Lander. We have had direct working experience with the DEQ through the Remediation Program. We found the Department fully capable and informed. With this as the background we fully support the Department's proposed Classification because we feel first and foremost that it was an informed choice that reflects the physical reality of most of Wyoming.

Our ranch is similar to much of Wyoming in that the vast majority of streams are not suited to full body immersion as most are either dry most of the year or lack easy accessibility presenting a substantial obstacle to use.

For example, our wintering operation occurs just south of Lander and many official maps show substantial water flows off of Table Mountain. It takes a prolonged storm event to temporarily fill most of the drainages into Willow Creek which is fenced, private, and not open to the public.

Department Response: See Approach for Identifying Waters for Secondary Contact Recreation Summary Response. Also see Recreational Designated Uses and Water Quality Criteria Summary Response.

Darcy Axtell (Manager) and Jerry Lake (Chairman), Hot Springs Conservation District: HSCD has worked with WYDEQ to conduct field verifications on 25 randomly selected sites within Hot Springs County. The majority of these sites are located on private property, with ditches that only run during spring run-off, or with small streams that stop flowing by mid to late summer. Unfortunately, at this time, all of these ditches are designated as primary contact streams, meaning they must support the same form of recreation as the Big Horn River. It would be highly irresponsible of HSCD, WYDEQ, EPA and that state of Wyoming to allow these ditches to remain in primary contact designation.

HSCD urges you to look closely at the thousands of pages of quantifiable data that our state's Conservation Districts have spent hundreds of hours and much money collecting. HSCD, and all of the other Conservation Districts in our state, work diligently to uphold a standard of operating procedures that make our work credible. We feel we have the responsibility to be good stewards of Wyoming's

land, as well as to the waters that run through it. We take on this responsibility with a deep sense of respect that parallels that of our land owners and recreationalists alike.

HSCD strongly supports the Categorical Recreational Use Attainability Analysis proposed and adopted by the WYDEQ and submitted to EPA on December 1, 2014.

Department Response: See Approach for Identifying Waters for Secondary Contact Recreation Summary Response. Also see Recreational Designated Uses and Water Quality Criteria Summary Response.

Stephen Jones, Meeteetse, WY: The DEQ/Wyoming has water quality standards based on designated uses. The Categorical Use Attainability Analysis for Recreation represents the best science currently available to screen Wyoming's water bodies for the likelihood of contact vs. non-contact recreational uses. The CUAA has been comprehensively reviewed. There is an appropriate methodology for review and appeal of the CUAA classification.

I support the use of the Categorical Use Attainability Analysis for Recreation by the Wyoming DEQ.

Department Response: See Approach for Identifying Waters for Secondary Contact Recreation Summary Response. Also see Recreational Designated Uses and Water Quality Criteria Summary Response.

Jim Wilson, Kirby Creek CRM: I represent the members of the Kirby Creek CRM, which is a group of landowners in the Kirby Creek watershed. We support the DEQ in their reasonable approach to stream classification concerning primary versus secondary contact.

The ephemeral nature of Kirby Creek does not qualify it for being a primary contact recreation stream. The Kirby Creek Watershed area encompasses a little over 128,000 acres, about 200 square miles.

The Kirby Creek CRM urges you to accept the UAA that the agency created in 2014 to determine the designation of streams in Wyoming.

Department Response: See Approach for Identifying Waters for Secondary Contact Recreation Summary Response. Also see Recreational Designated Uses and Water Quality Criteria Summary Response.

Zach Byram, District Manager, Lake DeSmet Conservation District: In 2010, when the Wyoming Association of Conservation Districts asked the conservation districts across the state for assistance on behalf of WDEQ in primary and secondary stream designations, the LDCD agreed. The district was given 27 randomly selected sites, some of which were in very remote areas that required hiking several miles into the backcountry and wilderness areas within our district boundaries. The LDCD staff took this job on with respect and professionalism and with the health, safety and welfare of our local citizens in mind. A lot of time and money was spent accessing these sites and visiting with individual landowners and land managers of those sites. Methods for collecting data were provided by WDEQ and followed by the staff. All sites visited received permission from the landowner or land manager, GPS points were recorded and time dated photographs looking both upstream and downstream were taken. Questions provided by WDEQ and WACD were answered by the staff and each landowner/land manager as they are the most familiar with the water within their area during the recreational season, the use of those waters, and how accessible the waters are to the general public. All of the sites within

the LDCD were visited during the peak recreation season, between July 9th and October 1st, 2010. The year 2010 was an average and typical year for Johnson County with normal rainfall and temperatures. No extremes were noted.

After all of the data had been gathered and evaluated by WDEQ all sites on the Bighorn National Forest were proposed to remain primary even if their flows were well below the 6 cfs required for primary designations. The Bighorn National Forest that lies within the LDCD boundary is used heavily during the recreation season. Most streams are located in or near high recreational areas such as Circle Park where a high use exists outside of the actual Forest Service Campground. Circle Park Creek itself is under 2.0 cfs. The staff and the US Forest Service acknowledged that this and all other forest sites were in a high use areas where camping and recreation is widely dispersed and should remain primary for this reason alone, regardless of flow.

The proposed secondary designations that occurred on private land were well below 6 cfs, were inaccessible to the general public and/or were ephemeral streams.

LDCD believe the criteria used by WDEQ in determining primary versus secondary contact recreation uses is appropriate and still meets the intent of the standard and meets EPA's expectations. While flow is important, location of waters and its recreational potential should figure in to the designation as well. WDEQ's questions included the likelihood of possible exposure by determining if the site was near a school, a park or campgrounds and trails helped determine the primary recommendations.

We can assure the public that the LDCD employees conducted these analyses with the best interest of the people of northern Johnson County and the natural resource itself.

In summary, the LDCD, strongly supports the Categorical Use Attainability Analysis proposed and adopted by the WYDEQ and submitted to EPA on December 1, 2014.

Department Response: See Approach for Identifying Waters for Secondary Contact Recreation Summary Response. Also see Recreational Designated Uses and Water Quality Criteria Summary Response.

Tyler and Liz Lauck, Wheatland, WY: As the DEQ created a model for stream designation with extensive public input as well as collaboration with Conservation Districts, and has implemented that model to classify streams, we support the DEQ's final list of stream designations.

The vast majority of Wyoming streams do not lend themselves to "immersion, full body contact, or frequent use of the water by children" due to low flows and lack of ready accessibility.

The Model used by DEQ represents a reasonable approach to stream classification as specific evaluation of over 700 streams, many only remotely accessible, would be impractical. This process maintains full opportunity for individual streams to be upgraded based upon submission of specific evidence.

As Wyoming citizens, we fully support the Wyoming DEQ's stream classification and ask that it be upheld.

Department Response: See Approach for Identifying Waters for Secondary Contact Recreation Summary Response. Also see Recreational Designated Uses and Water Quality Criteria Summary Response.

Don McDowell, Chair, Lingle-Fort Laramie Conservation District: On behalf of the Lingle-Ft. Laramie Conservation District, I would like to support the Categorical UAA as a defensible and appropriate method for designating recreational uses of Wyoming's surface waters.

The district completed field surveys on randomly selected sites and our findings concluded a secondary designation was more than appropriate. Three sites were dry and would carry water only in a major rainfall or early spring run-off conditions. The other sites were exclusively on private land and public access to the waters are limited or nonexistent.

Our District urges adoption and approval of the submitted Categorical UAA. The conservation districts have supplied defensible field verifications and validated the attainable recreational uses identified by the Categorical UAA. We feel our data sufficiently verifies the accuracy of the model supplied to DEQ and defaulting all waters as "primary" would place an unnecessary burden on our local district to validate findings already obtained.

Department Response: See Approach for Identifying Waters for Secondary Contact Recreation Summary Response. Also see Recreational Designated Uses and Water Quality Criteria Summary Response.

Terry Hayes, JW Hendry and Row Lucas, Lower Wind River Conservation District: The Lower Wind River Conservation District (LWRCD) Board of Supervisors is writing to support the Wyoming Department of Environmental Quality's (WDEQ) Categorical use Attainability Analysis (UAA) for recreational use designations on Wyoming's waters. Our district is one of three in Fremont County and encompasses nearly two million acres of land including the communities of Arapahoe, Morton, Kinnear, Pavilion, Shoshoni, Lysite, Lost Cabin, Moneta and Riverton. We represent 24,000 citizens on natural resource issues including but not limited to soil and water conservation. The soils in the district are shallow sands, silts, loams and clays which contain little organic matter and are low in fertility. Elevations range from 4,600 to 8,100 feet. Temperatures range from -45° to 102° F. Annual precipitation averages less than ten inches. All flowing waters within the LWRCD end up in Boysen Reservoir. Main perennial streams are the Big and Little Wind Rivers. Many intermittent and ephemeral streams only flow in the spring during snow melt or in unusual significant rain events.

We collected data and submitted to WDEQ the Use Attainability Analysis for Poison Creek as it is listed on the 303(d) list of impaired waters for E.coli and because it does not flow water unless there is a significant rain event. It is a stream that obviously needs to be listed as a secondary recreation stream. In the Categorical UAA, Poison Creek is listed as primary recreation only from Boysen Reservoir upstream to the town of Shoshoni. Even though the stream does not flow in this segment, it is close to the Rails to Trails and Boysen State Park where people go to recreate. The upstream remainder of Poison is listed as secondary recreation. The LWRCD supports the Categorical UAA proposed listing for Poison Creek.

Another stream in our district that is listed for *E. coli* is Muddy Creek. We have been collecting data to determine which segments are meeting the standards, which segments are not and the potential sources of impairment. The UAA proposes that a segment from Bass Lake Road downstream to Boysen Reservoir be designated primary recreation and the remainder of Muddy Creek upstream secondary

recreation. While we do not believe that people go to Muddy Creek to recreate, we support the Categorical UAA listing for Muddy Creek.

We also participated in the field verification of the Categorical UAA model. Our Manager spent many hours learning about the UAA model and determining the effect on streams in our district. Locations and access to the 19 sites, which were randomly selected by WDEQ, were determined. Landowners were contacted for permission to access the sites. Data were recorded and photos taken at each site. The completed data were submitted to WDEQ. The LWRCD spent nearly \$2,000.00 in time, mileage and supplies to collect and submit the data.

When the UAA was published for public comment in September of 2013, the LWRCD made suggestion to improve the accuracy of the UAA model considering that Wyoming is the third driest state in the United States and our district, on the average, has less than ten inches of rain per year.

We strongly support the approval of the Wyoming Department of Environmental Quality's Categorical Use Attainability Analysis for Recreation which was adopted by the WDEQ and submitted to the Environmental Protection Agency on December 1, 2014.

Department Response: See Approach for Identifying Waters for Secondary Contact Recreation Summary Response. Also see Recreational Designated Uses and Water Quality Criteria Summary Response.

Ralph Brokaw, Chairman, Medicine Bow Conservation District: The Medicine Bow Conservation District (MBCD) appreciates this opportunity to provide our comments in support of the Wyoming Department of Environmental Quality's Categorical Use Attainability Analysis for recreational use designations on Wyoming's waters.

With MBCD's intricate knowledge of our watershed through these projects, our water quality and stream flow monitoring, and our past collaboration with WDQ conducting field verifications of recreational uses on randomly selected sites, we feel the Categorical UAA is an appropriate, accurate method for designating primary and secondary recreational uses based on their potential risk of illness on Wyoming's surface waters.

Department Response: See Approach for Identifying Waters for Secondary Contact Recreation Summary Response. Also see Recreational Designated Uses and Water Quality Criteria Summary Response.

Steffen Cornell, Resource Specialist, Meeteetse Conservation District: On behalf of the Meeteetse Conservation District (MCD) Board of Supervisors, I am submitting this letter to reiterate our support of the final Categorical Use Attainability Analysis (UAA) for Recreation conducted by the Wyoming Department of Environmental Quality, Water Quality Division (WDEQ/WQD).

On behalf of the Meeteetse Conservation District (MCD) Board of Supervisors, I am submitting this letter to reiterate our support of the final Categorical Use Attainability Analysis (UAA) for Recreation conducted by the Wyoming Department of Environmental Quality, Water Quality Division (WDEQ/WQD).

We commend WDEQ for the tremendous effort that it has endured in order to have the best and most accurate recreation use designations possible for Wyoming streams and rivers. It goes without saying

that in order to adequately implement the Clean Water Act we must be working with accurate data and properly classified waters. As you are most certainly well aware, Wyoming Conservation District Law provides that Conservation Districts (CDs) are charged with the statutory responsibility to implement soil and water conservation projects and as such has the technical expertise necessary to conduct the site specific UAAs that resulted in the validation of the model. As with any model, we believe that while there may be some instances where additional site specific verification will be necessary the UAA model has provided a solid base to build on and fine tune. This is demonstrated by the high level of agreement achieved when results of the model are compared to the hundreds of field surveys that were conducted by CDs and WDEQ.

EPA has gone on record to support WDEQ's approach and scientific reasoning in properly identifying streams that do not meet the criteria for primary contact recreation.

Department Response: See Approach for Identifying Waters for Secondary Contact Recreation Summary Response. Also see Recreational Designated Uses and Water Quality Criteria Summary Response.

Lisa Ogden, District Manager, Natrona County Conservation District: Natrona County Conservation District is in support of the Categorical UAA for Recreation (August, 2014), which was approved on August 20, 2014.

An incredible amount of research, field work and reconnaissance was conducted by WDEQ as well as the Conservation Districts across the State of Wyoming, and sufficient data was submitted to support the decision to identify primary and secondary contact recreational uses for the waters in Wyoming. Out of 900 field visits conducted by the Wyoming Conservation Districts, Natrona County Conservation completed 27 field visits and completed surveys for each location, including documenting the visit with photos.

Out of the 27 sites that we visited, only 6 sites even contained water or were damp. An additional 11 sites were dry, but it was evident that during winter run-off or a storm event, there was a possibility of water to flow on the site. Eleven sites that were visited were open fields or prairie lands that didn't seem to have seen a drop of water for many years. All of these locations visited were taken from GPS points that were supposed to be a "primary contact waterbody."

Department Response: See Approach for Identifying Waters for Secondary Contact Recreation Summary Response. Also see Recreational Designated Uses and Water Quality Criteria Summary Response.

Kevin Gaukel, Chairman, Niobrara Conservation District: We realize there has been a tremendous amount of effort put into the research, ground truthing and preparation of this document. The NCD commends you on the follow through required for EPA approval.

We would like it to be clear that the NCD completed surveys on 22 sites in Niobrara County. These surveys were completed between August 30, 2010 and September 28, 2010, during the designated recreational season. In the final UAA document there was 100% agreement, within the model, on the recreational use designation of these sites and the completed surveys. Many of these sites were designated as secondary recreational use due to the low flow criteria.

We also have sites, based on the model, which will be held to a primary standard due to their proximity to schools, parks and municipalities that do not sustain flow to allow for any type of recreation nor have the access for recreation. However, there is an understanding of the inherent risk due to that proximity.

The Niobrara Conservation District strongly supports the Categorical Use Attainability Analyses for Recreation. The model represents sound science that has been verified and ground truthed on a statistically significant number of sites.

We would encourage the approval of this UAA based on the amount of work and effort that has gone into the development of the model, the sound science that it is based on and the interest of proper recreational designation of the waters of Wyoming.

Department Response: See Approach for Identifying Waters for Secondary Contact Recreation Summary Response. Also see Recreational Designated Uses and Water Quality Criteria Summary Response.

James Sedman, Chair, North Platte Valley Conservation District: On behalf of the North Platte Valley Conservation District, I would like to support the Categorical UAA as a defensible and appropriate method for designating recreational uses of Wyoming's surface waters.

The North Platte Valley Conservation District takes the responsibility of water issues very seriously and submitted several site specific UAA's in 2010.

Our District urges adoption and approval of the submitted Categorical UAA. The conservation districts have supplied defensible field verifications and validated the attainable recreational uses identified by the Categorical UAA. We feel our data sufficiently verifies the accuracy of the model supplied to DEQ and defaulting all waters as "primary" would place an unnecessary burden on our local district to validate findings already obtained.

Department Response: See Approach for Identifying Waters for Secondary Contact Recreation Summary Response. Also see Recreational Designated Uses and Water Quality Criteria Summary Response.

Niels Hansen, President, PH Livestock Company: My family has been ranching in the Rawlins area for well over 100 years. We have been on the same ranch for the last 114 years and I have been managing the family ranch for the past 41 years. Please accept these comments from a longtime Wyoming resident and on who has invested heavily in protecting our land and water resources.

We feel the Model used by DEQ for stream classification is a fair and appropriate approach to classify the streams in Wyoming. Most of Wyoming's streams do not lend themselves to immersion, full body contact, or frequent use by children. When you consider the fact that so many of Wyoming's streams are inaccessible and are low flow and intermittent, any other approach is inappropriate.

We have been long and strong proponents of using good science when making management decisions rather than allowing political pressure and emotion to dictate decisions. I again urge for the continued use of the DEQ Model.

Department Response: See Approach for Identifying Waters for Secondary Contact Recreation Summary Response. Also see Recreational Designated Uses and Water Quality Criteria Summary Response.

Jack Berger, Chairman, Saratoga-Encampment-Rawlins Conservation District: SERCD strongly supports the Categorical Recreational UAA proposed and adopted by the Wyoming Department of Environmental Quality (WDEQ) and submitted to the Environmental Protection Agency (EPA) on December 1, 2014.

SERCD was directly involved in assisting the WDEQ in ensuring that the Categorical UAA for contact recreation use designations is a scientifically defensible and accurate approach to addressing the accurate designation of primary and secondary contact recreation uses on Wyoming's waters. It is our priority that those waters capable of supporting primary recreation uses are accurately designated to ensure that human health is protected.

SERCD staff assisted WDEQ in 2010 in validating the UAA model with field verifications at thirteen sites in Carbon County within SERCD boundaries. In June of 2010, WDEQ provided many Conservation Districts in Wyoming detailed verification protocols and computer generated, randomly selected site locations to ground truth for WDEQ UAA model verification. More specifically, the WDEQ addressed EPA's 2010 concerns by including questions answered by the land managers or landowners as part of the field verification protocol. Questions were asked of the land manager representative or private landowner and signatures obtained at each of the field verification Sites which accompanied the Categorical UAA checklist information.

All work conducted at these sites was in the best interest of the people of the county and its resources. GPS coordinates were provided for all verified location for accuracy and to enable others to visit the exact area of the site visited by the districts.

Of the thirteen sites verified within SERCD during the summer and early fall of 2010, 77% of the sites were appropriately identified as secondary contact recreation per the Categorical UAA. One additional site was identified as secondary contact recreation in SERCD's ground truthing work but WDEQ left it as primary with flow of more than 6 cfs. Utilizing the Categorical UAA will optimize the number of appropriately designated streams as primary or secondary and save the district significant time and money in conducting site-specific recreational use UAAs. The Categorical UAA allows SER and other districts to focus our attention on the waters than can actually support primary contact recreation. Another added benefit of this model is that it classifies waters as primary contact recreation that are close to towns, schools, and recreation areas even though they may exhibit flows well below 6 cfs.

With all the ground-truthing work conducted to strengthen the model, we are confident the WDEQ Categorical UAA is scientifically based and defensible.

Department Response: See Approach for Identifying Waters for Secondary Contact Recreation Summary Response. Also see Recreational Designated Uses and Water Quality Criteria Summary Response.

Scott Sims, Manager, Sims Cattle Company LLC: Sims Cattle Company LLC appreciates this opportunity to provide our comments in support of the Wyoming Department of Environmental Quality's Categorical Use Attainability Analysis for Recreational use designations on Wyoming's waters.

The Model used by DEQ represents a reasonable approach to stream classification as specific evaluation of over 700 streams, many only remotely accessible, would be impractical.

Department Response: See Approach for Identifying Waters for Secondary Contact Recreation Summary Response. Also see Recreational Designated Uses and Water Quality Criteria Summary Response.

George Kelso, Chairman, South Big Horn Conservation District: SBHCD strongly supports the Categorical Recreational Use Attainability Analysis proposed and adopted by the DEQ and submitted to EPA on December 1, 2014.

In 2010, the SBHCD worked collaboratively with DEQ to conduct field verifications on 28 randomly selected sites within south Big Horn County. This was a small part of a larger statewide conservation district effort of over 720 total sites in order to provide a sufficient level of data points to verify the accuracy of the model DEQ was developing. Conservation Districts invested hundreds of hours and thousands of dollars in conducting these verifications to assist in the development of the model.

SBHCD strongly supports the adoption of the DEQ's Categorical UAA. SBHCD and other conservation districts throughout the state have put in considerable time, effort, and expense in helping to develop a sound, scientific approach to improving stream classification within the state.

Department Response: See Approach for Identifying Waters for Secondary Contact Recreation Summary Response. Also see Recreational Designated Uses and Water Quality Criteria Summary Response.

Dan Jackson, Chair, South Goshen Conservation District: On behalf of the South Goshen Conservation District, I would like to support the Categorical UAA as a defensible and appropriate method for designating recreational uses of Wyoming's surface waters.

The South Goshen Conservation District takes the responsibility of water issues very seriously and submitted several site specific UAA's in 2010.

Our District urges adoption and approval of the submitted Categorical UAA. The conservation districts have supplied defensible field verifications and validated the attainable recreational uses identified by the Categorical UAA. We feel our data sufficiently verifies the accuracy of the model supplied to DEQ and defaulting all waters as "primary" would place an unnecessary burden on our local district to validate findings already obtained.

Department Response: See Approach for Identifying Waters for Secondary Contact Recreation Summary Response. Also see Recreational Designated Uses and Water Quality Criteria Summary Response.

Michael Henn, District Manager, Sublette County Conservation District: SCCD strongly supports the Categorical Recreational Use Attainability Analysis proposed and adopted by the WYDEQ and submitted to EPA on December 1, 2014.

In 2010, the SCCD worked collaboratively with WYDEQ to conduct field verifications on 63 randomly selected sites within Sublette County. This was part of a larger statewide conservation district effort of over 720 total sites in order to provide sufficient level of data point to verify the accuracy of the

model. Conservation Districts invested hundreds of hours and thousands of dollars in conducting these verifications.

The Categorical UAA is a robust, defensible and appropriate method for designating recreational uses on Wyoming's surface waters. Under the current default of all waters being protected as "primary", absent the adoption and approval of the Categorical UAA, site specific UAA's would be required on 77,514 stream miles. This is an unnecessary burden on the state and local governments when a statistically defensible number of field verifications have validated the attainable recreational uses identified by the Categorical UAA. SCCD believes the criteria utilized by WYDEQ in determining primary versus secondary contact recreation uses is appropriate and reflects the intent of the standard and meets EPA's expectations. In addition, we believe they have conservatively approached designation of recreational waters where despite flow conditions, waters are located in areas where a higher likelihood of exposure to the water exists such as those in or near schools, public parks or near recreational campgrounds, etc.

SCCD strongly encourages EPA to adopt WYDEQ's Categorical UAA. SCCD and others have put in a tremendous amount of time and effort to develop a sound scientific approach to stream designation.

Department Response: See Approach for Identifying Waters for Secondary Contact Recreation Summary Response. Also see Recreational Designated Uses and Water Quality Criteria Summary Response.

Dan Rice, Chairman, Washakie County Conservation District: WCCD strongly supports the Categorical Recreational Use Attainability Analysis proposed and adopted by the DEQ, which you submitted to the Environmental Protection Agency (EPA) on December 1, 2014.

WCCD was specifically involved in assisting the WDEQ in ensuring that the Categorical UAA for Contact Recreation uses was scientifically defensible, and to help ensure an accurate designation of primary and secondary contact recreation uses on Wyoming's waters. This involvement included field verification of sixteen (16) of the eighteen (18) sites in Washakie County, which were selected randomly by WDEQ using their UAA Geographic Information System (GIS) model. Two of the sites were inaccessible as one was in the middle of a BLM Wilderness Study Area and the other in an area with steep canyon walls and the point was where the stream ran underground. The WCCD staff, assisted by our local landowners and a local BLM employee, spent countless hours meeting with landowners to discuss access and locations and collecting field data information to validate the sites, which was accomplished between July 28, 2010 and August 20, 2010. All data and ground verification documentation was submitted to the Wyoming Association of Conservation Districts (WACD) on August 20, 2010 for their compilation with all of the Wyoming Conservation District UAA field verification data to then be submitted to WDEQ on our behalf.

WDEQ's Recreational Use UAA Survey Worksheet was utilized to record all of the necessary data (GPS coordinates, photos, landowner/manager knowledge of the site, and watershed information). The information gathered by WCCD was compared to the predictions of WDEQ's GIS model. The WDEQ's GIS model was in 100% agreement with WCCD's field verification in that, the secondary use designations are substantiated where there was low to zero flow of water, and were not near a municipality, designated recreational use area therefore a low chance of ingestion.

As a local government primarily charged with natural resource conservation, WCCD believes the WDEQ's Categorical Use Attainment Analysis is scientifically based and defensible.

Department Response: See Approach for Identifying Waters for Secondary Contact Recreation Summary Response. Also see Recreational Designated Uses and Water Quality Criteria Summary Response.

Lacey Gurien, District Manager, Weston County Natural Resource District: On behalf of the Weston County Natural Resource District (WCNRD) Board of Supervisors in Newcastle, WY, we appreciate the chance to further comment in support of the Wyoming DEQ's Categorical Use and Attainability Analysis for recreational use designations on Wyoming waters in the Weston Country Natural Resource District.

WCNRD believes the criteria used by WDEQ to determining primary versus secondary contact recreation uses is appropriate and meets EPA's expectations. While flow is important, location of waters and its recreational potential should figure in to the designation as well. WDEQ's criteria included the likelihood of possible exposure by determining if the site was near a recreational area (i.e., park, school, or trail) or area in which exposure was possible determined the primary recommendations. WCNRD feels that WDEQ did a thorough job in meeting the intent of the standards set by EPA.

The Weston County Natural Resource District conducted field verifications at 13 randomly selected sites that were provided by DEQ for analysis. WCNRD filled out survey forms provided by DEQ to answer questions and verify the classifications of these streams. Locations throughout Weston County are in large very rural and privately owned locations that are utilized for agricultural purposes and thus are to be considered secondary waterways. The bulk of the counties secondary waters are ephemeral streams. The ones that were modeled by DEQ as primary are correct in their classification.

WCNRD strongly supports the Categorical Recreational Use Attainability Analysis proposed and adopted by the WDEQ and submitted to the EPA on December 1, 2014.

Department Response: See Approach for Identifying Waters for Secondary Contact Recreation Summary Response. Also see Recreational Designated Uses and Water Quality Criteria Summary Response.

Shaun Sims, President, Wyoming Association of Conservation Districts: On behalf of the Wyoming Association of Conservation Districts, representing Wyoming's 34 local Conservation Districts, we appreciate this opportunity to provide additional comment and input in support of the Wyoming Department of Environmental Quality's Categorical Use Attainability Analysis for recreational use designations on Wyoming's waters.

The Association strongly supports the Categorical Recreational Use Attainability Analysis proposed and adopted by the Department of Environmental Quality and submitted to EPA on December 1, 2014.

The recreation use designations determine the appropriate *E. Coli* standard that will be applied to waters to maintain protection of its attainable uses. The Association recognizes that this criteria is a risk management based standard. The higher the likelihood of full body immersion type activities there is increase the potential for an individual to ingest water and subsequently increases the *potential* risk of illness. Conversely if water exists in such low or nonexistent quantities that the risk of ingesting water is minimal then the potential for illness is decreased substantially. Current science indicates water that have been contaminated by human feces or sewage effluent, have the greatest potential

for transmitting diseases to humans and those that are impacted by nonpoint source, including various animal feces, represents variable and generally lower risk to bathers.

Many of the waters being changed to secondary contact recreation, in addition to being remote, they have low to zero flow water which, outside of potential human recreational waste impacts, will have little human waste contributions. The criteria utilized by DEQ resulted in those waters that are near public schools, parks, etc. assumedly near municipal, more densely populated areas and subject to more human waste impacts, as primary. Hence, human waste substantially increase the potential risk to human health where contact recreation waters exist and the Association believes that those waters are largely designated primary due to their vicinity to municipal areas.

Department Response: See Approach for Identifying Waters for Secondary Contact Recreation Summary Response. Also see Recreational Designated Uses and Water Quality Criteria Summary Response.

Shaun Sims, President, Wyoming Association of Conservation Districts: The Categorical UAA is a robust, defensible and appropriate method for designating recreational uses on Wyoming's surface waters. Under the current default of all waters being protected as "primary", absent adoption and approval of the Categorical UAA, site specific UAA's would be required on 77,514 stream miles. This is an unnecessary burden on the state and local governments when a statistically defensible number of field verifications have validated the attainable recreational uses identified by the Categorical UAA.

In 2010, the districts in Wyoming worked collaboratively with DEQ to conduct field verifications on over 720 randomly selected sites in order to provide sufficient level of data points to verify the accuracy of the model. Districts invested hundreds of hours and thousands of dollars in conducting these verifications. Attached are photographs of a few examples of these field verification results throughout the state (Attachment A).

We believe the criteria utilized by the Department in determining primary versus secondary contact recreation uses is appropriate and reflects the intent of the standard and meets EPA's expectations. In addition, we believe they have conservatively approached designation of recreational waters where despite flow conditions, waters are located in areas where a higher likelihood of exposure to the water exists such as those in or near schools, public parks or near recreational campgrounds, etc.

Attached are some examples that demonstrate the appropriateness of these changes (Attachment B). One is Middle Prong Wild Horse Creek in Campbell County CD. This water has minimal flow, significantly below 5 cfs, it is predominately on private land with little to no access and does not serve as a recreational water.

Conversely, there are obvious waters such as the North Fork Shoshone and Goose Creek as shown in Attachment B that will remain primary. In addition, there are other smaller waters such a Circle Park creek, as depicted in Attachment A in Johnson County that will remain primary, despite 1.19 cfs of flow, due to its vicinity near a campground.

Other states have adopted the same type of approach in recognition that the standard was developed based on data from high recreation use beach areas and did not account for smaller, intermittent and ephemeral systems. Colorado has the same secondary standard in place as being proposed by Wyoming.

The Association and member districts encourage the EPA to approve Wyoming's Categorical Use Attainability Analysis for designation of recreation uses. There has been a tremendous amount of work put into this Categorical UAA by many across the state, and in consultation with EPA.

Department Response: See Approach for Identifying Waters for Secondary Contact Recreation Summary Response. Also see Recreational Designated Uses and Water Quality Criteria Summary Response.

Doug Miyamoto, Director, Wyoming Department of Agriculture: The WDA strongly supports DEQ's final UAA for Recreation. The UAA takes a logical and comprehensive approach in the fine scale identification of streams in the state having the potential of supporting primary contact recreational activities. Primary contact recreation or primary waters are those waters where recreational activities would be expected to result in full immersion and/or ingestion of the water, any other waters will be considered secondary contact recreation waters. In addition, waters that lack sufficient flows to support primary contact recreation (i.e. ephemeral, small intermittent and small perennial streams), and/or with a mean annual flows less than 6 cfs are designated as secondary contact recreation waters. These designations provide users a more accurate depiction of where primary and secondary contact waters exist in the state.

The rationale and methods used by DEQ are defensible and field verified by both DEQ staff and Wyoming Conservation Districts (CD). Together 871 field surveys validated the findings and supports DEQ's identification of primary and secondary contact recreation waters. WDA supports these findings based on the numerous field verifications and believes these to be comprehensive and defensible to those who may question the UAA's determination.

We appreciate the DEQ collaborating with Wyoming CD's in verifying the determination of the category of waters in the UAA. Wyoming CDs are leaders in the state water quality assessments and for their diligent work on impaired and threatened waters with the state. CDs have local knowledge and expertise of Wyoming's waters and watershed conditions. We appreciate your continued support and acknowledgement of their expertise.

We strongly support DEQ in the development and implementation of this UAA for Recreation. We believe the approval of this strategy will benefit the general public and the state by providing a more accurate depiction of areas meeting the definition of primary contact recreation waters and through the decreased need of future UAAs on streams having very little to no likelihood of being primary contact water. We appreciate the opportunity to comment and look forward to the approval of Wyoming's UAA for Recreation.

Department Response: See Approach for Identifying Waters for Secondary Contact Recreation Summary Response. Also see Recreational Designated Uses and Water Quality Criteria Summary Response.

Andy Blair, Lander, WY: I understand that ~10% of the surface drainages considered under the UAA are dry for the majority of the year and that ~80% of the remainder flow at or below 1 CFS. For the remaining ~10% that are between 1 CFS and 6 CFS, I would encourage a higher level of scrutiny than a categorical redesignation.

My family, friends and I regularly recreate on and in low flow streams more than a mile from towns and more than a half-mile from developed campgrounds and trailheads. I ask that you consider this when assessing the rule and adjust it accordingly.

Department Response: See Approach for Identifying Waters for Secondary Contact Recreation Summary Response. Also see Recreational Designated Uses and Water Quality Criteria Summary Response.

George Jones, Laramie, WY: There is no reason to think that average annual flow adequately expresses, for this purpose, the suitability of a stream for recreational use. Especially in and near the mountains, streams with very small average annual flows may run quite a lot of water in the spring and early summer, and therefore attract recreational users during those times. I hope that, when the Department staff uses a model based on average annual flow for classifying streams, they are careful to examine the assumptions behind that model, and to test them when possible. Along these lines, I would like to know why an average annual flow of 6 cfs was selected in this case.

It's clear that there are many small streams in the state that receive very little or no recreational use, and it's reasonable that the Department designate them as suitable for secondary recreation use. But I think the method that DEQ has used in this case is not reasonable. I hope that DEQ staff will use, instead, a method that recognizes differences between small streams in popular recreation areas from those in seldom-visited areas.

Department Response: See Approach for Identifying Waters for Secondary Contact Recreation Summary Response. Also see Recreational Designated Uses and Water Quality Criteria Summary Response.

Shari Kearney, Lander, WY: Most of my recreation (work and play) has been far deeper than the yardstick ½ mile from campgrounds and public trailheads. Usually my first campsite is not closer than 10 miles from the nearest road and sometimes 20.

I just completed a 9 day trip on the west side of the Wind River Mountains where I saw scores of other recreation users, most of them were 10 miles or more from the closest road. They were fishing, hiking, and camping amongst some of the most incredible wild lands the lower 48 has to offer with creeks and streams and lakes everywhere.

None of us want to see the safe guarding of these waters less protected.

Please reconsider the current proposal. Let's look at the low flow streams and look at them at their seasonal flow, when people will be using them. Let's redefine the markers to more accurately reflect recreational users actual experience. People walk and recreate deep into the watersheds.

Let's not needlessly downgrade our most precious resource.

Department Response: See Approach for Identifying Waters for Secondary Contact Recreation Summary Response. Also see Recreational Designated Uses and Water Quality Criteria and Changes in Water Quality/Protection of Downstream Waters Summary Response.

Linda Olinger, Riverton, WY: My family, friends and I regularly recreate on and in low flow streams more than a mile from towns and more than a half-mile from developed campgrounds and trailheads. I ask that you consider this when assessing the rule and adjust it accordingly.

Department Response: See Approach for Identifying Waters for Secondary Contact Recreation Summary Response. Also see Recreational Designated Uses and Water Quality Criteria Summary Response.

Bruce Pendery, Logan, UT: My family, friends and I regularly recreate on and in low flow streams more than a mile from towns and more than half-mile from developed campgrounds and trailheads. I ask that you consider this when assessing the rule and adjust it accordingly.

Department Response: See Approach for Identifying Waters for Secondary Contact Recreation Summary Response. Also see Recreational Designated Uses and Water Quality Criteria Summary Response.

Connie Wilbert, Associate Organizer, Sierra Club Wyoming Chapter: A significant concern relates to the broad assumptions made by the Department in identifying which streams to reclassify. While we understand the desire to identify streams with so little water that recreational uses like swimming, floating, playing, and cooling off could not take place, this proposal is based on assumptions that cause many miles of streams to be incorrectly reclassified.

People in Wyoming are outdoorsy folks, often walk miles from developed recreation areas and trailheads, and often play in streams while out and about on the landscape. On a hot summer day, it's quite common for hikers to refresh themselves in the cool water of streams, large and small. Assuming that people don't use smaller streams is simply not true.

Using average annual flows to reclassify stream size completely obscures seasonal fluctuations in stream flow. Higher flows during spring and summer runoff correspond closely with times of high recreational use. Stream size classification should be based on seasonal flow data, not average annual flow data, and a minimum flow of 6 cfs is too high. Streams with 6 cfs frequently have nice wading and dipping pools, and should not be arbitrarily downgraded.

The Department's request that citizens identify specific streams for reevaluation by legal description is problematic, and we hope the Department will be willing to take a step back and respond to the underlying problems with this entire approach. Most people don't have the ability to identify every stream reach that this proposal would incorrectly reclassify as unable to support recreational uses.

Department Response: See Approach for Identifying Waters for Secondary Contact Recreation Summary Response. Also see Recreational Designated Uses and Water Quality Criteria Summary Response.

Sandy Shuptrine, Chair, Teton Conservation District: While I understand the agency's desire to 'simplify' their oversight, I do not consider it reasonable to shift the burden of managing water quality to currently unidentified local entities or individuals by requiring them to provide proof for reclassification back to a primary standard should it be appropriate.

In other words, the burden of proof and necessary process to adjust the model shifts to currently unknown 'others' to prove increased pollution, with likely limited resources to do so, vs. state

protection of water quality. This is particularly true in light of recent Wyoming legislation that strictly limits the ability to access any property that is not one's own for data collection. It seems better to acknowledge varied conditions upfront, in the interest of the highest water quality we are able to achieve in our state, as well as limited bureaucratic confusion later on.

In looking through the WDEQ Water Quality Rules and Regulations, particularly Chapter 1, page 2, section 3 (b) and (d), which list the objectives of the WDEQ water quality program, I see that "where attainable, the highest possible water quality commensurate with fisheries and drinking water" should be sought. This seems out of sync with the current proposal.

Department Response: See Approach for Identifying Waters for Secondary Contact Recreation Summary Response. Also see Recreational Designated Uses and Water Quality Criteria Summary Response.

Daly Edmunds, Regional Policy Coordinator, Audubon Rockies: Our staff and members enjoy the outdoors and the outstanding recreational opportunities, sharing them across multiple generations. With friends and families in tow, recreational pursuits often involve a myriad of stream encounters that usually includes exposure to the waters in Wyoming's streams – those farther than one mile from towns and schools and one-half mile from developed campgrounds and public land trailheads.

Department Response: See Approach for Identifying Waters for Secondary Contact Recreation Summary Response. Also see Recreational Designated Uses and Water Quality Criteria Summary Response.

Andrew and Nancy Carson, Wilson, WY: The notion that because a particular body of water is somewhat distant from a roadhead or is otherwise deemed 'inaccessible' is particularly wrongheaded. Wyomingites, us included, are quite capable of walking a long ways in a day for any number of reasons, recreation being one of them. Horses, too, will help us get to any destination we so choose to visit, and dipping in nearby backcountry streams and lakes is so commonplace that we are breathless as we contemplate this ill-considered action.

We do note that the DEQ asks that we identify each and every stream by longitude/latitude, and/or other tedious and lengthy methods, and we object to that request as well. That seems to be a way of making public participation more onerous and difficult, thus weakening the considerable negative input this unwelcome idea would otherwise garner.

Department Response: See Approach for Identifying Waters for Secondary Contact Recreation Summary Response. Also see Recreational Designated Uses and Water Quality Criteria Summary Response.

Franz Camenzind, Jackson, WY: I find the use of the mean 6 cubic feet of flow per second (CFS) threshold to be arbitrary and unsupported by reality.

Measurements taken to determine "mean flows" - high spring flow, moderate summer flow, or low fall flow, and how does this metric account for low flow streams that have year-round pools that beckon recreationists to enter and enjoy with full body contact? This threshold is entirely arbitrary and unsupported by the reality of human, back country use.

Applying this arbitrary threshold to reclassify nearly 88,000 miles of Wyoming's waterways from Primary Designation (permitting ≤ 125 E. coli per 100 ml. water) to Secondary Designation (allowing up to 630 E. coli per 100 ml. water) in one universal decision demonstrates a complete disregard for variations in seasonal stream flow, the varying potentials for human use based upon the stream's location, e.g. National Forest back country trails and specifically National Forest designated Wilderness Area streams. All of which receive high seasonal recreational use. And placing upon the public the burden to correct reclassifications, one stream at a time is ridiculous in light of the manner in which they were universally downgraded in the first place.

Department Response: See Approach for Identifying Waters for Secondary Contact Recreation Summary Response. Also see Recreational Designated Uses and Water Quality Criteria Summary Response, Class 1 Waters and Maintaining Water Quality Summary Responses.

Daniel Jirón and Nora Rasure, United States Forest Service: The U.S. Forest Service continues to support the effort of Wyoming Department of Environmental Quality (WDEQ) to appropriately classify waterbodies on National Forest System (NFS) lands in Wyoming for recreation uses. We consider the shift from a single recreation use designation in the Wyoming Water Quality Rules and Regulations (Chapter 1) where all waters are managed for primary contact recreation to a system where certain waters are managed for primary contact recreation and the remaining waters are managed for secondary contact recreation as reflected in this "Categorical Use Attainability Analysis for Recreation" to be a positive change for water quality protection of the state's waterbodies. With the approval of the "Categorical Use Attainability Analysis for Recreation" (Rec Use UAA), the designated recreation use for the majority of the state's waterbodies will be more consistent with the actual or potential use of each waterbody for primary contact recreation. This will help us to better manage water quality in general forest areas for protection of recreational use by focusing available resources to those locations where primary contact recreation use is actually occurring or can potentially occur.

We appreciate WDEQ's openness to consider our ideas and concerns throughout the long process that went into the development of the Rec Use UAA.

Department Response: See Approach for Identifying Waters for Secondary Contact Recreation Summary Response. Also see Recreational Designated Uses and Water Quality Criteria and Rationale for Modifying Recreational Uses Summary Responses.

Jazmyn McDonald, Lander, WY: In particular, I hope DEQ will recognize that very many of those of us who get outside in Wyoming get much farther than one half-mile from trails and campgrounds; many of us are hunting, fishing, birding, rock-climbing or rock-hounding; and all of those activities take us into the field and away from developed infrastructure. I encourage the DEQ to think of a more reasonable distance from designated campgrounds and trails as being three to five miles, not one half-mile.

Department Response: See Approach for Identifying Waters for Secondary Contact Recreation Summary Response. Also see Recreational Designated Uses and Water Quality Criteria Summary Response.

Lisa McGee, Jackson, WY: I write to express my concern and disappointment with the DEQ's decision to downgrade 76 percent of Wyoming's surface waters from primary contact to secondary contact recreation. Although some streams undoubtedly warranted a reclassification, this sweeping approach, which encompasses thousands of stream miles in which people recreate, went too far.

I understand that at this point, the DEQ is requesting input from citizens about streams that we believe should not have been downgraded. The agency is asking the public to provide detailed information - GIS coordinates, photos, narratives – about individual streams that we have personal experience with in order to disprove the DEQ’s determination that primary contact recreation is not attainable. I take issue with this approach.

Another criticism I have of the DEQ’s request for specific stream information to refute individual downgrades is that it is contrary to the plain letter and spirit of the Clean Water Act. The statute sets a goal that where attainable, water quality that provides for the protection and propagation of fish, shellfish and wildlife, and recreation in and on the water will be achieved. The regulations implementing the statute effectively establish a rebuttable presumption that uses specified in the Act (e.g. recreation) are attainable. Even if the public had the capacity to provide the onerous and detailed evidence that the DEQ is now requiring, which we do not and especially not within a 45-day window, it is not the public’s responsibility to do this. It is the DEQ’s job to illustrate to the EPA – based on credible and reliable data – that its downgrades are warranted.

Despite this hardship the DEQ is placing on citizens, it will undoubtedly hear from citizens during the hearing and in comments about individual streams they and their families use for primary contact recreation. This testimony will explain that myriad low-flow streams (now downgraded) are in fact used recreationally for dunking, splashing, wading, children’s play, cooling off and other summer uses. But reclassification back to primary contact should not be limited to these individual examples. For every stream that one person can attest is in fact used for primary contact recreation, the DEQ should assume hundreds, if not thousands of others were also downgraded improperly. This is because the model upon which DEQ based its decision is inherently flawed.

Another example that the model is flawed is its premise that Wyoming people of all ages don’t travel more than a mile from a school or populated area. Wyoming would be a difficult place to live if you were a person that didn’t enjoy the outdoors. Most folks who live in Wyoming believe access to and experience on public land are some of the finest opportunities Wyoming offers. We are a culture of people who enjoy being outside and active and we spend a lot of our time purposefully getting far more than a mile from town.

Over the years my husband and I have hiked and backpacked in places too numerous to mention in Yellowstone and Grand Teton National Parks, the Bridger-Teton, Shoshone, Bighorn and Medicine-Bow National Forests and BLM land in Sublette, Sweetwater and Fremont Counties. I can’t recall all the stream crossings or stream encounters we’ve had. There is no realistic way I could document these. I assume that many of these streams have now been downgraded to secondary contact recreation. This is especially troubling because we now take extended backpacking trips and long hikes with our son and his friends who love nothing more than to play in small stream for hours on end.

Most parents can attest that water is a huge draw for kids in any outdoor setting. My son Dylan (6) and his friends Zoe (6) and Colton (7), backpacked with us and their families this summer 8 miles into Deep Lake in the Wind River Mountains. Deep Creek flows between Deep Lake and Clear Lake. This low-flow and now downgraded stream provided 3 days of (super fun) primary contact recreation for these Wyoming kids. Last summer this same group backpacked 7.5 miles into Grand Teton National Park’s Cascade Canyon, where again, play in the low-flow Cascade Creek was the focus of the kids’ time in the backcountry. Our kids were 5 and 6 years old. Kids are particularly susceptible to ingesting water during stream play. For this reason any streams that hikers use in the summer should be presumed to

be accessible to and used by their young and hearty kids – no matter the distance from a town or school.

Perhaps the DEQ could start with ephemeral or intermittent streams on private land as a category of streams not likely to offer primary contact recreation opportunities. The DEQ could also reconsider whether flows fewer than 6 cfs represent an appropriate cutoff and whether, because some locations (e.g. mountainous areas) experience higher runoff during the summer (the time when families are recreating in and around them) these streams should retain primary contact recreation status.

Department Response: See Approach for Identifying Waters for Secondary Contact Recreation Summary Response. Also see Recreational Designated Uses and Water Quality Criteria Summary Response, Changes to Water Quality/Protection of Downstream Waters, and Class 1 Waters Summary Responses – wilderness areas have been withdrawn from the analysis.

Gary Cukjati, Director, National Outdoor Leadership School: *The application of the model is too broad, and the model itself relies on some flawed assumptions.* NOLS recognizes that there are many dry washes and seasonally-dry streams that do not need to be held to primary recreation standards. However, many mountain and foothill streams with six or less cubic feet per second average annual flows have either seasonally-sufficient flow for primary recreation, or they form pools in places where full body immersion is possible and likely. Flows in these streams vary greatly throughout the years, and can fluctuate greatly over days or even hours, and deeper pools can hold water for weeks with no surface flow to replenish them. The ground-truthing done by WDEQ and the Conservation Districts involved in the model development, though well intentioned, did not match the scale of the model nor cover an adequate diversity of mountain, foothill, and wilderness streams. The outdoor recreation community could have assisted with gathering of pertinent data had they been involved, and these challenges could have been addressed in the early stages of the study. There is still opportunity to do so, and we encourage WDEQ to pursue such efforts.

Additionally, the buffer distances assigned to maintain primary recreation standards around public facilities and trailheads are largely irrelevant. We and many others have already made the case that the public will travel many miles through the backcountry, and often even off-trail, to use small streams for primary contact recreation. While additional buffers around established trails would be a step in the right direction, it would still not account for the primary contact recreation of thousands of people in Wyoming's remote wilderness every summer. These flaws in the study's assumptions suggest that it may be impossible to impose a statewide Categorical UAA. It may be more feasible to conduct smaller, regional-scale Categorical UAAs based on ecological zones and hydrological regimes, and using a refined process with greater public input.

The Categorical UAA unfairly flips the presumption of clean waters for recreation and puts the burden of proof on the public to show which of the 87,000 downgraded streams should be held to a higher standard. This type of action lacks precedent nationally and is a burdensome task to put on the people of Wyoming. It is our belief that this move goes counter to the purpose and intent of the Clean Water Act. WDEQ's website states, "Since 1973, Wyoming Department of Environmental Quality has served as the state's regulatory agency charged with protecting, conserving and enhancing Wyoming's land, air and water for the benefit of current and future generations," and the Wyoming Environmental Quality Act states, "...it is hereby declared to be the policy and purpose of this act to enable the state to prevent, reduce and eliminate pollution; to preserve, and enhance the air, water and reclaim the land of Wyoming...". The Categorical UAA in its current form seems to go counter to these stated purposes. The burden of proof should remain on those who wish to downgrade a stream's recreational

contact standard. Lower water quality standards should be the exception, not the rule, in Wyoming's streams.

Department Response: See Approach for Identifying Waters for Secondary Contact Recreation Summary Response. Also see Recreational Designated Uses and Water Quality Criteria, Changes to Water Quality/Protection of Downstream Waters, and Class 1 Waters Summary Responses.

Paige Smith, Cheyenne, WY: The Water Quality Division is now asking Wyoming citizens with a vested interest in the levels of *E. coli* exposure they, their families, friends, and clients may be inadvertently experiencing to now bear the burden of saying specifically which of the 87,775 miles of streams should be reinstated as primary streams. This burden of proof on citizens is unprecedented and I would think violates the Clean Water Act. It appears that the Water Quality Division and Conservation Districts limited their decision making to very specific stream metrics without taking into consideration the "big picture" geography surrounding the streams and the associated popularity to users of the backcountry in a particular area. It's disconcerting that no one from the recreation/environmental community was asked to conduct site visits or invited to accompany the DEQ or Conservation Districts when they conducted their site visits.

Department Response: See Approach for Identifying Waters for Secondary Contact Recreation Summary Response. Also see Recreational Designated Uses and Water Quality Criteria and Changes to Water Quality/Protection of Downstream Waters Summary Responses.

Jonathan Ratner, Director, Western Watersheds Project: DEQ's begrudging hearing was limited to testimony on what essentially amounts to reverse UAA's. The notice failed to provide information that the entire categorical UAA is open for comment. So the public hearing, as noticed, does not comply with the regulatory requirements.

The notice limited comment to only reverse UAA information. The notice stated: The public is invited to provide oral and written comments and/or documentation regarding the existing and potential recreation activities *on streams designated for secondary contact recreation as described in the Categorical UAA*. Documentation provided should be sufficient for WDEQ/WQD to confirm whether primary contact recreation is an existing or attainable use, or not, on a particular stream. Such information may include photographs, flow data, and other information at the level of detail described in the worksheets contained in Appendix C of the Categorical UAA. Modification of a surface water designation established in the Categorical UAA will require the presentation of information sufficient to identify: (1) the location of the stream (e.g., latitude and longitude, object ID provided in the web map, etc.) and (2) the existing and potential recreational activities associated with the stream, given the physical condition of the stream.

The categorical downgrade is considered by DEQ as a given.

In the EPA's June 3rd, 2015 letter they state: "the EPA expects that the burden of proof to rebut the presumption for uses specified in CWA § 101 (a)(2) remains with the state." Yet both the final decision to implement the CUAA as well as the notice of the hearing both overturn that burden and clearly place it on the shoulders of the public.

The question to be answered is whether primary contact is an existing or if it is an attainable use. The modeling effort by the DEQ does not answer that question.

According to the U.S. EPA, primary contact recreation includes uses such as: “The primary contact recreation classification protects people from illness due to activities involving the potential for ingestion of, or immersion in, water.” “Swimming, bathing, surfing, water skiing, tubing, water play by children, and similar water contact activities where a high degree of bodily contact with the water, immersion and ingestion are likely.”

It appears that the DEQ has limited its considerations to actual swimming (which even that model fails to correctly classify as demonstrated by Wyoming Outdoor Council’s previous comments) and failed to address the other aspects of primary contact such as ingestion.

Even the DEQ’s definition supports this conclusion. The Wyoming DEQ defines primary contact recreation as “any recreational or other surface water use that could be expected to result in ingestion of the water or immersion (full body contact).”

As discussed in WOC’s previous comments is the fact that during the recreation season flows are often up to twice the mean annual flow. The chart provided in the CUAA displays this problem quite nicely as it clearly shows most of the flow is during the recreation season.

The absurdity of the DEQ’s assumptions is on clear display on page 32 of the CUAA where the DEQ states:

“Streams with similar mean recreation season and mean annual flows have flow regimes that are typical of streams with insufficient flow to support primary contact recreation (i.e., ephemeral streams, small intermittent streams and small perennial streams). Therefore, stream with mean annual flows less than 6 cfs do not have sufficient flow to support primary contact recreation unless they occur in areas that are easily accessible to children and/or the public.”

So, summarily, the DEQ has determined that primary contact in streams under a mean annual flow of 6 cfs is *unattainable*, except that those same streams, where primary contact is *unattainable*, if they are located in areas that are “easily accessible to children and/or the public” and then primary contact is attainable. The logical inconsistency with DEQ’s position is unsupportable.

The CUAA at page 7 states:

The remaining flow streams that are not proximate to areas frequented by children and/or the public can be grouped together categorically since the conditions that most influence the recreational use of the streams are sufficiently similar. These streams will be designated for secondary contact recreation.

This statement is completely false and unsupportable. This CUAA groups together significant streams in high elevation Wilderness areas with ephemeral washes in the Bighorn Basin. If what the DEQ was attempting to do was do a CUAA on ephemeral washes that would be something we would be fine with as everyone can agree primary contact is unattainable in these systems. They are also easily defined and are sufficiently similar to be categorized together, that is a far cry from what the DEQ has done here.

Department Response: See Approach for Identifying Waters for Secondary Contact Recreation Summary Response. Also see Recreational Designated Uses and Water Quality Criteria, Changes to Water Quality/Protection of Downstream Waters, and Class 1 Waters Summary Responses.

Dan Heilig, Wyoming Outdoor Council: The DEQ engaged in a three-step process to develop its UAA and the resulting recreation use downgrades. The first step relied on GIS databases “to identify streams that do not support primary contact recreation” due to low flow conditions. Without any input from the outdoor recreation community, the DEQ decided that streams with mean annual flows under 6 cubic feet per second (CF) do not have sufficient flow to support primary contact recreation.

In step two, the DEQ used “additional GIS databases to identify any ‘low flow’ streams that may be used for primary contact recreation or where primary contact recreation may be an existing use because the stream is located in an area where children and/or the public have easy access to the stream.” UAA at 6. The DEQ reasoned that “[a]lthough these streams will generally not support full body immersion since they are ‘low flow’, the water in these streams might be ingested by children and/or other members of the public and therefore should be protected for primary contact recreation.” *Id.*

In the third and final step, “the UAA incorporated public feedback received during an August 6 to September 30, 2013 public comment period.” *Id.* The DEQ concluded that: “Based on the feedback received during the August 6 to September 30, 2013 public comment period, there are not any pools or deep water areas located on ‘low flow’ streams that are used for primary contact recreation that are not designated for primary contact recreation in the UAA.” *Id.*

Based on this three-step analysis, the DEQ concluded:

For streams where the UAA indicates that there is not sufficient water availability (low flow conditions) to support primary contact recreation, not sufficient access or recreational opportunity to support primary contact recreation, and public feedback has not indicated that the stream is used for primary contact recreation, primary contact recreation is presumed not to be an existing or attainable use and can be removed. The remaining low flow streams that are not proximate to areas frequented by children and/or the public can be grouped together categorically since the conditions that most influence the recreational use of the streams are sufficiently similar. These streams will be designated for secondary contact recreation.

See UAA at 7.

The on-the-ground result is that of the 115,373 stream miles shown on the 1:100,000 NHD, an astonishing number of surface waters – comprising 87,775 stream miles – were downgraded to secondary contact recreation under the DEQ’s decision. Only 27,598 stream miles would retain their primary contact recreation use designation.

As will be described in more detail below, the Administrator’s August 20, 2014 decision, and the process used to support it, are directly contrary to the fundamental goals and requirements of the Clean Water Act, and represent an astonishing reversal of the longstanding rebuttable presumption embedded in the Clean Water Act that primary contact recreation is an attainable use that must be protected unless the regulatory authority affirmatively demonstrates otherwise.

1. *A flawed process to identify low flow streams, coupled with a misplaced reliance on low flows to justify a downgrade, led to a legally and scientifically flawed decision.*

In suggesting that the DEQ consider the option of developing a “categorical UAA” the EPA wrote:

The Region cautions that the defensibility of a categorical approach would likely depend on identifying a category or categories of waters that are sufficiently similar such that it is reasonable to use site-specific information or a representative sample of location to characterize the existing and potential uses for the entire category (e.g., ephemeral waters). However, for the reasons identified above, the Region's perspective is that the most appropriate and defensible method for determining the most appropriate recreation use is to compile and consider site-specific information for each segment of concern.

Letter from EPA Region 8 to Mr. Dennis M. Boal, Chair, Wyoming EQC, dated September 29, 2008, at 20.

The DEQ has failed to provide site specific information that is representative of all the various types of surface water present in the 115,373 stream miles that flow over 97,914 square miles of Wyoming's landscape.

The DEQ, in conjunction with some conservation districts, conducted approximately 850 surveys, which amounts to one survey per 135 stream miles (100k NHD) and one survey per 331 stream miles (24k NHD). Certainly, any assertion that information collected from these field surveys is representative of the complex surface water system encompassing the entire State Of Wyoming and over 115,000 stream miles cannot be accepted. Moreover, although Wyoming conservation districts "visited over 700 sites to help validate the UAA," not all of those site visits took place during the summer recreation season. UAA at 20. The DEQ claims that, "the photographs are shown only to depict channel and flow characteristics" without acknowledging that flows and flow characteristics may vary widely based on any number of factors, and a snapshot taken on a single occasion may not be representative of flows that one might encounter on those streams at other times within the summer outdoor recreation season.

Based on information displayed in the DEQ's *Recreation Designated Uses Web Map*, it appears that most site visits occurred in areas that are accessible by motor vehicle, and a much smaller number were conducted inside higher elevation forested areas or in other remote mountainous parts of the state where summer flows can vary widely due to snow melt, precipitation and diurnal temperature variation. The model used in this UAA does not predict how much snow will fall (or accumulate on the ground) in any given year (or month or week), nor does it predict temperatures or rainfall during summer months, all of which influence flows. A deep mountain snowpack lingering into early summer will eventually melt off, but the rate of the melt-off, and thus the stream flows, will be influenced by temperatures and rainfall events. The smaller number of field surveys of remote mountainous areas means that in some cases site-specific information was not available to validate assumption made regarding flows on hundreds, and perhaps thousands, of miles of stream segments. See Recreation Designated Uses Web Map, <http://gis.deq.wyoming.gov/maps/recreation/>

The attached photograph, marked as Photo Exhibit 1, shows a downgraded stream in the Wind River Range. Although the DEQ identified the stream in the photo as a "low flow" stream, one can plainly see that the flows are considerably greater than 6 cfs, perhaps as high as 30 or 40 cfs, or even higher. This photo provides evidence that the model, for whatever reason, is unreliable at estimating stream flows and therefore should not be relied upon to support DEQ's decisions to downgrade streams.

Stream flow was not the only variable considered in the UAA. Using information from 17 USGS gage sites, DEQ attempted to make estimates regarding the depths of low flow streams. See UAA at 19. In its interpretation of the data, the DEQ employs qualifying terms such as "rarely" and "unlikely" in

estimating depths. Clearly, agency guesses about stream depths are not representative of the kind of information that should be included in the “structured scientific assessment” required by 40 CFR §131.10(g). In addition, the DEQ fails to convincingly demonstrate how data from 17 gage stations are representative of more than 115,000 stream miles flowing over sixty-two million acres of Wyoming’s landscape.

In correspondence with the DEQ during the development of the categorical UAA, EPA Region 8 discussed the limitations of the model with regard to depth estimates:

The EPA acknowledges that stream depth varies along a segment and it would be difficult for any model to accurately capture this variability. The EPA cautions states interested in using depth as the justification for removing primary contact that we are not aware of GIS stream depth data that would be scientifically defensible to make such a demonstration.

Letter from EPA Region 8 to Lindsay Patterson, DEQ/WQD dated January 22, 2013, Note 4. In an effort to overcome this shortcoming in the model, DEQ solicited information from a limited segment of the public concerning the existence of pools or other deep-water areas on low flow streams. As discussed in section 3, below, this “public outreach” effort fell far short of what is required to reverse the presumption of swimmable uses on these streams.

Attached as Photo Exhibit 2 is a photograph of a woman floating on an air mattress on a warm summer day in a pool located on a downgraded “low flow” stream in the Bridger-Teton National Forest. There is no doubt that this photo, and many others like it, would have been provided to DEQ during the comment period if DEQ had adequately encouraged public participation in the UAA process. Even so, the fact that DEQ required the public to disprove its unsubstantiated assumptions on “low flow” and lack of deep pools is a problem even if public participation had been robust.

EPA Region 8’s guidance on recreation and swimming states that:

With regard to the swimmable component of this national goal, EPA recognizes the physical characteristics (e.g., depth, flow) of some western waterbodies do not lend themselves to swimming and other forms of primary recreation. However, the general Agency policy on this issue is to place emphasis on the *potential* uses of a waterbody and to do as much as possible to protect the health of the public (see 48 FR 51401 and the Water Quality Standards Handbook at p. 1-6) (emphasis in original). In certain instances, the public will use whatever waterbodies are available for recreation, regardless of the flow or other physical conditions. Accordingly, EPA encourages States to designate primary contact designation uses, or at least to require a level of water quality necessary to support primary contact recreation, for all waterbodies with the potential to support primary contact recreation.

EPA Region 8 Guidance: Recreation Standards and the CWA Section 101(a)(2) “Swimmable” Goal, May 1992 (emphasis in the original).

EPA’s statement about the public using “whatever waterbodies are available” is of course true, particularly in arid regions of Wyoming such as the Red Desert, where useable water is both rare and precious, and in most other areas of the state during the later summer season when stream flows have been diminished. For example, see attached Photo Exhibit 3 showing children playing in ephemeral ponds in the Killpecker Dunes areas of the Red Desert. This observation is even more correct with respect to children who, as EPA has recognized, “can be very creative about achieving full body contact

in even the smallest waterbodies.” See Letter from EPA Region 8 to Dennis Boal, Wyoming EQC, dated September 29, 2008 at 19.

This of course is all the more reason to protect low flow streams for primary contact recreation. Streams flowing at well below 6 cfs will be used for primary contact recreation if that is all that is available, especially in the case of children. See attached photograph marked as Photo Exhibit 4, showing two young boys ages 11 and 13, playing in a downgraded low flow stream in the Wind River Range. It should be noted that pools occur frequently, even in the smallest of streams, where boulders are present in the stream channel, a common feature of mountain streams not considered by DEQ.

2. The DEQ improperly limited Clean Water Act protections to “easily accessible” surface waters.

Relying on Wyoming Department of Education school bus policy and questionable assumptions about recreational use of Wyoming’s surface waters, the DEQ has taken the position that “low flow” streams more than a mile from populated places and schools and more than a half-mile from established campgrounds and trailheads do not need to be protected for primary contact recreation because they are not “easily accessible.” UAA at 34. The DEQ acknowledges that those “[d]istances were based on a general understanding of how far children and/or members of the public walk from their homes, schools and recreation sites.” UAA at 33.

There are a number of problems with this approach. First, what is, or is not, easily accessible depends on a variety of factors and varies widely. Second, DEQ’s “general understanding” of recreational use behaviors of both children and adult is demonstrably incorrect, and decision based on that understanding are completely arbitrary. Third, the Clean Water Act’s recreation use protection are not limited to surface waters deemed to be easily accessible.

Areas of the State that are “easily accessible” to some may for any number of reason be inaccessible to others. A number of factors such as age, health and fitness of the individual, road and trail access, weather, mode of transportation, land ownership, and many other variables play a role in determining accessibility. We do not dispute that low flow streams near schools and population centers are likely to be frequented by children and adults and therefore deserve to be protected for primary contact recreation. But we fundamentally disagree with the notion that surface waters in rural and “uninhabited” areas of the state, and on the millions of acres of Wyoming’s landscape located more than a mile from schools, towns and recreation sites, categorically do not deserve the same level of protection. The Clean Water Act’s recreation use protections are not limited to urbanized or more developed areas of a state deemed to be “easily accessible” based on school bus policy. Under the DEQ’s approach, a ditch, canal or low flow stream flowing through a rural neighborhood (or child’s back yard) located more than a mile from a school or town would not be protected for primary contact recreation. This makes no sense.

Regarding school bus policy, it should be noted that elementary school travel takes place when school is in session (i.e., during the fall, winter and spring), when temperatures are much cooler and conditions are often less than ideal for children traveling by foot. Thus, we question how school bus data is relevant in any way to distances school children may travel during summer months, when school is out and temperatures are more conducive to outdoor play. In addition, children walking to school, or to the school bus stop, do so at specified times of the day (morning and afternoon) in narrow windows which limit the time children may have to walk and to play. This type of structured activity does not at all reflect the play behavior of children on summer vacation, which again is the season the UAA is addressing.

Children will play in streams, canals and ditches miles from the nearest town or school, often near their own or their friends' homes and ranches. Many will walk, but during summer months, even more will ride their bicycles, greatly expanding the distances they may travel. Far ranging expeditions are a normal part of children's development and recreation, especially in a rural and wild state like Wyoming. In Wyoming's rural areas, travel by horseback, or on four-wheelers is also an option for many children. And of course children will play in whatever water source they find, regardless of flow or quality. See attached photograph, Photo Exhibit 5, showing child's play on downgraded stream in Bridger-Teton National Forest.

With respect to adult recreation behavior, the DEQ's conclusion that "since elementary school children are expected to walk up to a mile to school, WDEQ/WQD anticipates that children and/or *members of the public may travel up to 1.0 mile* from populated places and potentially use streams within that distance for primary contact recreation []" is incorrect. UAA at 34. How is the distance traveled by elementary school children to and from school relevant in any way to distances adults may travel for summertime recreation activities? The answer, of course, is that it is not. It is common knowledge that adults travel not only a mile from populated places but 5 miles, 10 miles and even 20 miles in some of Wyoming's wilder and more remote country such as its wilderness areas. See Recreation Exhibit 1 (Meeks Lake trailhead sign). Trips of these distances are normal in Wyoming and contribute to our cultural identity. See, e.g., Washakie Ranger District, Shoshone National Forest visitor information, attached as Recreation Exhibit 2. (unmarked pages 5-6 show hiking distances to popular backcountry destinations, ranging from 1.5 to 16.0 miles). See also Wyoming Atlas & Gazetteer, page 10, Hiking (describing popular hikes of up to 21 miles (each way)), attached as Recreation Exhibit 3, and The Wyoming Range: Wyoming's Namesake Mountains, attached as Recreation Exhibit 4 (noting 75-mile Wyoming Range National Recreational Trail).

The DEQ concluded that because "large areas of the state are uninhabited... the majority of ephemeral, small intermittent and small perennial streams with insufficient flow to support primary contact recreation do not attract children and/or the general public for recreation because they are not located near population centers, schools or recreation sites." UAA at 33. Yet, what the DEQ does not address is that, "*in EPA's view, remoteness is not a valid basis for an attainability decision on recreation.*" 63 Fed. Reg. 36742, 36753 (July 7, 1998) (emphasis added).

The truth is that remoteness and inaccessibility are some of the very features that draw people from across the state and around the world to Wyoming's backcountry areas. See, e.g., Wyoming Recreation Guide, attached at Recreation Exhibit 5 ("The National Landscape Conservation System units in Wyoming offer exceptional opportunities for solitude, exploration, research, recreation, and education."). The state's vast public lands offer world-class recreation opportunities that attract people from all over the world. Recreation Exhibit 6 (Greater Yellowstone Visitors Guide). We are familiar with numerous examples of children as young as five and six accompanying their parents on extended backcountry expeditions into remote areas of the Wind River Range and the Absaroka Mountains. The Red Desert also has extremely remote areas that people regularly venture into, such as the Jack Morrow Hills and Adobe Town. See Recreation Exhibit 7, Wyoming's Red Desert Wild Heart of the West.

Sometimes the travel is by foot, other times it may be on the back of a horse, or with goats or llamas. Children in the company of adults travel much greater distances than the DEQ's "general understanding" would suggest, to enjoy outdoor recreation opportunities that state's public land areas provide. See Photo Exhibit 6. Backcountry locations in the Bridger and Fitzpatrick Wilderness in the

Wind River Range or the Cloud Peak Wilderness in the Bighorn Mountains are just a few examples of locations that families with children often visit. In addition, children attending summer camps such as Elk Creek Camp and Teton Valley Ranch Camp often backpack several miles from the trailhead to enjoy an overnight camping trip on public lands.

With regard to access, EPA Region 8's guidance explains that:

[I]f people are physically restricted from getting to the waterbody, this would help support a conclusion that establishing a swimmable goal standard is not required at present. On the other hand, if access is provided (e.g., trail is located adjacent to the waterbody), this increases the likelihood that the waterbody will be used for primary contact recreation. Because a critical function of water quality standards is to protect potential uses, access can be an important consideration in reaching a decision about recreational uses.

EPA Region 8 Guidance: Recreation Standards and the CWA Section 101(a)(2) "Swimmable" Goal, May 1992 at 5.

Virtually all of Wyoming's thirty million public land acres are open to public access and myriad recreational activities, and the UAA does not identify any areas of the state closed to recreation. Public lands managed by the USDA Forest Service and the Bureau of Land Management literally contain thousands of miles of trails, paths and "two-tracks" which provide access to millions of acres of lands enjoyed by the public. The laws governing the management of these lands specifically provide for recreation, and numerous policies and programs encourage recreational use on these lands, for both commercial and non-commercial use. See Public Lands Recreation Opportunities, attached as Recreation Exhibit 8. In addition, nearly 3.6 million acres of State Lands are open to recreation.

The National Outdoor Leadership School (NOLS), based in Lander, WY, reported over twenty-one thousand user days during the summer season on the Shoshone and Bridger-Teton National Forests in 2013. NOLS also reported hundreds of user days on Wyoming's public lands managed by the Bureau of Land Management. Wilderness expeditions led by NOLS are typically 30 days in length; during that period, NOLS students and their instructors may travel on hundred miles or more on foot, both on and off-trail. During the entire time in the backcountry, they rely on naturally occurring surface waters for all their water needs, which include typical recreational activities such as swimming, floating and wading, but also uses such as dunking and splashing to cool off, bathing, cooking, and personal hygiene, etc. All of these activities, to one extent or another, present a risk of ingestion of water, and all are encompassed by the Wyoming DEQ's definition of primary contact recreation. See Chapter 1, Section 2(b)(xlii) ("primary contact recreation' means any recreational *or other surface water use* that could be expected to result in ingestion of the water or immersion (full body contact))." (emphasis added).

Of course, NOLS is not the only commercial user that travels by foot into the backcountry. Professional guides and outfitters; college outdoor programs; schools and research institutions such as Teton Science School; summer camps and outdoor programs such as Elk Creek Ranch Camp, Teton Valley Ranch Camp, and Wilderness Ventures; guest ranches, scouting organization and others are authorized by federal land managers and use vast areas of Wyoming's backcountry. Similarly, non-commercial recreational users, which include hikers and backpacker, trail runners, climbers and mountaineers, hunters and anglers, horseback riders, mountain bikers, and many others, travel much farther than one mile to enjoy their pursuits.

In conclusion, there is no basis whatsoever for DEQ's "general understanding" about distances adults and children may travel for recreational purposes and any conclusion based on that understanding about what is and isn't "easily accessible" is incorrect.

Department Response: See Approach for Identifying Waters for Secondary Contact Recreation Summary Response. Also see Recreational Designated Uses and Water Quality Criteria, Changes to Water Quality/Protection of Downstream Waters, and Class 1 Waters Summary Responses.

WDEQ/WQD would also like to note that the Letter from EPA Region 8 to Mr. Dennis M. Boal, Chair, Wyoming EQC, dated September 29, 2008 referenced the Table A and Table B designations WDEQ/WQD made through revision of Chapter 1 in 2007. These comments do not refer to the current Categorical UAA, which was developed in close collaboration with EPA to ensure consistency with federal regulations and guidance.

Dan Heilig, Wyoming Outdoor Council:

Recreation datasets.

- No trailheads or dispersed camping sites are noted in the data set for Sweetwater County. Similarly, only two trailheads in Natrona County and no dispersed camping sites are identified.
- It appears that county and state park trails and trailheads are not identified or included in the data sets.
- Forest system trails, user created trails, and off-trail areas and destinations used by hikers and backpackers, and information easily obtained from recreation user groups is apparently not included in the data sets, and if this information was included, there is no indication it was considered.
- Bureau of Land Management trails, primitive roads, two-tracks, historic trails, Special Recreation Management Areas, Wilderness Areas, Lands with Wilderness Characteristics, backcountry byways, etc. apparently were not included in the data sets, and if this information was included, there is no indication it was considered.
- Wyoming Game and Fish Department public easements, Access Yes properties and Hunter Management Areas apparently were not included in the data sets.
- Dispersed Campsites. This data layer does not have a definition and is apparently not populated into the DEQ's GIS from any external resource. Hundreds, perhaps thousands of dispersed campsites exist across Wyoming's public lands.

Department Response: The comment does not provide sufficient information to designate waters for primary contact recreation. WDEQ/WQD recommends working with the department to provide sufficient information to demonstrate that any waters located adjacent to or near the areas identified above support full body immersion during the summer recreation season or small children have regular contact with the water equivalent to swimming during the summer recreation season.

Also see Approach for Identifying Waters for Secondary Contact Recreation and Public Process Summary Responses.

Dan Heilig, Wyoming Outdoor Council: *Survey sites.* Figure 39 on page 39 reveals the absence of survey sites in Sweetwater County. Were any surveys conducted in Sweetwater County? If not, the failure to validate model results for this very large county should disqualify it from further consideration in the UAA.

Department Response: See Approach for Identifying Waters for Secondary Contact Recreation Summary Response.

Doug Miyamoto, Wyoming Department of Agriculture: I just want to commend DEQ and the Wyoming Association of Conservation Districts for ground-truthing this model, taking the time to do that to make sure that it works. Anytime you can develop a model that comes up and you find out that it's about 95 percent accurate, you've done a lot of work on it, and it serves a purpose the make governance a lot more efficient and a lot more effective than it is today. So thank you for your time.

Department Response: See Approach for Identifying Waters for Secondary Contact Recreation Summary Response.

Don McDowell, Lingle-Fort Laramie Conservation District: I'd like to thank you for the opportunity to address this hearing, and on behalf of the Lingle-Fort Laramie Conservation District, I'm here to support the DEQ in their decision to accept the categorical UAA as a defensible and appropriate method for designation of recreational use of Wyoming waters.

Now, I included these same comments in writing, and I have an extra set for you, but we spent in 2010 a lot of time and effort and money to study the random sites that were sent down to use from DEQ. Of the five in our district, three were dry, would only carry water in the event of a major rainfall event or after heavy snow. Two of them were actually wet, one of them on the head of Rawhide Creek. You could probably get wet in it, but there's not much water there. The other one was actually in the Laramie River, but both wet spots were located on private land.

And the Laramie River, below Grayrocks Dam, with the exception where it goes through the Fort Laramie historical site, it is surrounded by private property. So public access is slim to none on any of the actual waters we found.

So in closing and to make this quick, our district urges adoption and approval as submitted categorical UAA. The conservation district has supplied defensible field verifications and validated the attainable recreational uses identified by the categorical UAA.

We feel our data sufficiently verifies the accuracy of the model and defaulting all these waters as primary is just going to be a mess. It's going to put a burden on our district, it's going to put a burden on our budgets and the findings are not going to be any different than what we've already done.

Department Response: See Approach for Identifying Waters for Secondary Contact Recreation Summary Response.

Bobbie Frank, Wyoming Association of Conservation Districts: We support the UAA and the work that DEQ has done.

We think that DEQ's approached it very conservatively in terms of identifying even those low-flow waters that are located in recreational areas, campgrounds, schools and the areas where there may be a higher likelihood of activity.

The conservation districts statewide in 2010, as was indicated by the previous speaker, assisted voluntarily offering to DEQ to assist with site verification to validate accuracy of the model. The districts felt this was very important given that they were using a model-based approach, that we need

to ground-truth it to ensure that it was scientifically defensible and protective of Wyoming's contact and - primary and secondary rec uses.

720 randomly selected sites were provided to the district who then invested significant time, energy and resources into ground-truthing and collecting data that was then submitted to DEQ. Those sites ranged from high backcountry wilderness areas to, as the previous speaker indicated, plain systems, ephemeral and intermittent draws.

It think that your record indicates the defensibility of the model, and we believe it is an appropriate approach to address the issue.

Department Response: See Approach for Identifying Waters for Secondary Contact Recreation Summary Response.

Hap Ridgway, Elk Creek Ranch: I'm speaking for Elk Creek Ranch. Elk Creek Ranch is located up in the northwestern corner of the state. It is a ranch camp for teenagers. We opened up in 1957 and operated ever since then.

The teenagers, we backpack and hike. We trail ride. We pack trip. We fish. We camp a lot. We're out in that -- those high mountains of northwestern Wyoming. Teenagers love water. They're in it all -- any time -- opportunity they have. They -- and many of these things, many of the times they get into the water and there's a water fight or they're swimming or they're daring people to get in underneath the waterfall, all those things, a lot of them are in streams that are not downgraded in this proposal. A lot of them are in those, and in spite of that theme, there are spots up there that do not fit the model that you talked about.

The third thing that concerns me is just the disproportionateness of this action. Wyoming's a conservative state. One premise of conservatism is change what you need to change, don't change what you don't need to change, and this, to me, changes a lot that doesn't need to be changed. There is probably a core issue here that is very important that needs to be changed, but it's -- this is swatting a fly with a sledgehammer.

We've heard a lot about this model and the sampling. I spoke to conservation folks up in one of the offices in the Big Horn basin and they talked about the ten sites they went to visit and verify. You've heard how that works now. And she went through that and said nine of the ten tested out exactly the way the DEQ said they would. One didn't. I said were any of those -- and I hate to disagree with the presenter from before -- were any of those in the high country, and she said no, none of them were. So is there a problem up there or not?

I don't think the sample, or the model, gets at that question, and I'm back to that point of change what you need to change, don't change the other things.

I think it really needs a redo. I won't go through all of that. I just was -- I come away from this very troubled by the -- I think the reach out to everybody and the notice and all that bothered me, the disproportionateness bothers me, but what really bothers me is the danger to our resources. Very subtle, but a danger to our resources. Thank you very much.

Department Response: See Approach for Identifying Waters for Secondary Contact Recreation Summary Response.

Gary Wilmot, Wyoming Outdoor Council: I'm here today on behalf of the 1500 members, and the Outdoor Council doesn't support the categorical UAA in its current form. We believe that it needs to be improved. I'm also here as a father. I have two young girls, and both of them spend a lot of time in the outdoors, and actually I don't think this is a surprise to anyone here that kids like to play in small streams and even those small streams that are deep in the backcountry.

I've also worked as a guide and a teacher throughout Wyoming's forests and high mountains and basins. Over a period spanning more than a decade, I've lived for 135 weeks in remote locations, camping and hiking with my students and relying on the state's surface water for every possible use, including swimming, dunking my head or just cooling off after a day hiking.

Many of the waters that were reclassified in this categorical UAA and that now allow for more pollution are waters that my kids, my students and members of the Wyoming Outdoor Council do use for primary contact recreation. There are too many stream segments to catalogue for the purpose of this testimony or meeting, so my aim here is to address the model used by the Wyoming DEQ, which we've heard a lot of great things about so far.

When my colleague, Dan Heilig, called me a year ago to tell me about his decision, I went immediately to the Wyoming DEQ's website and I loaded the maps, and literally, the first stream segment I look at was a place that that summer I had camped with my kids, and they swam in the creek for three days and that section of stream was downgraded to secondary contact recreation.

It was located in the wilderness, high in the Wind River Mountains, and, you know, we swam and we fished in it, and it was actually the kind of water that was so big that a parent is a little bit nervous. You know, my kids were up on the rock slabs in the pools, but just below the rock slabs, it was flowing swiftly enough that I wouldn't let them play there.

And, you know, for me, that first look showed me that there were problems with the model, you know, and I'm not sure whether it was just the fact that it was the wrong -- you know, it should have been lower than six cfs, but I think streams were caught here that shouldn't have been downgraded, streams that are actually used for primary contact recreation.

And I think what also was evident to me is that the public awareness around this and the presentations that I have heard subsequently by the Wyoming Department of Environmental Quality describe a lot of these waters as dry draws, and these weren't dry draws. You know, my kids were swimming in them, you know, just a month before.

In addition to looking at flow, the model for this rule made an exception for streams close to populated places and trailheads. It was based on the premise that children won't travel more than one mile from a populated place to play in the water. That place I referenced a moment ago, located between Clear and Deep lakes in the Wind River Mountains, that was more than a six-mile hike. The DEQ based its one-mile distance on school bus policy. And while I agree it might make some sense in regard to getting to school by 7:45 a.m., it's a flawed assumption in regard to how people recreate and how kids recreate in the state of Wyoming.

This summer, my kids spent four solid weeks in the mountains. They traversed an entire mountain range and they covered a hundred miles. They played in the high mountain streams that flowed less than six cfs. That was a long trip for an 11- and a nine-year-old, but truth be told, I think Wyoming

families bring their kids into the mountains and the mile mark is often passed before the end of the first game of 20 questions.

This gets to the heart of the matter for me. The model that you're currently deploying here captures a lot of great streams that people actually use for recreation. My family, friends and members of the Wyoming Outdoor Council know this firsthand.

It's too onerous for citizens to come to you with every single stream we use. It just doesn't seem like the right way to handle this issue. A better solution would be to flip the assumption back to primary contact recreation in a lot of the areas of the state.

So my biggest request would be that you consider scaling this reclassification back quite a bit to get rid of a lot of the big flaws.

I also hope you scrap that assumption that people will not walk more than half a mile from a trailhead or a mile from a population center to play in the water. That's a seriously flawed assumption.

The model also captures a lot of streams that people use for recreation. You might fix this by using a more appropriate flow data for the early summer months specifically when the snowpack runoff is at its peak and when outdoor recreation is also at its peak.

The DEQ and many of Wyoming's conservation districts have done a lot of important work on this rule, and I ask that DEQ to take this opportunity to build on that effort and to craft a rule that both solves the problem it set out to address while delivering the result that it actually sought, which was to accurately reclassify the state's waters.

And that second goal of accurately, accurately classifying the state's waters, it wasn't met here. Water is scarce and precious in Wyoming, and this decision sets a very low bar for its protection. I hope we can do better.

Department Response: See Approach for Identifying Waters for Secondary Contact Recreation Summary Response. Also see Recreational Designated Uses and Water Quality Criteria Summary Response and Class 1 Waters Summary Response.

Shannon Simms, Medicine Bow Conservation District: We feel the categorical UAA is an appropriate and accurate method for designated primary and secondary recreational uses. One of the strong -- one of the reasons we feel strongly as such is we worked closely with DEQ to ground-truth the model and those models came out accurate a high percentage of the time.

Department Response: See Approach for Identifying Waters for Secondary Contact Recreation Summary Response.

Steffen Cornell, Meeteetse Conservation District: On behalf of the Meeteetse Conservation board of supervisors, I'm submitting this letter to reiterate our support of the final categorical use attainability analysis for recreation conducted by the Wyoming Department of Environmental Quality, Water Quality Division.

We would like to commend DEQ for this tremendous effort that it has endured in order to have the best and most accurate recreation use designations possible for Wyoming streams and rivers.

As you're most certainly aware, conservation district law provides that conservation districts are charged with the statutory responsibility to implement soil and water conservation projects and as such has the technical expertise necessary to have conducted the site-specific UAAs that resulted in the validation of the UAA model.

As with any model, we believe that while there may be some instances where additional site-specific verification will be necessary, the UAA model has provided a solid base to build on and able to be fine-tuned. This is demonstrated by the high level of agreement achieved when results of the model are compared to the hundreds of field surveys that were conducted by conservation districts and the Wyoming DEQ.

The EPA has gone on record to support the DEQ's approach and scientific reasoning in properly identifying streams that do not meet the criteria for primary contact recreation.

Department Response: See Approach for Identifying Waters for Secondary Contact Recreation Summary Response.

Evan Reimondo, National Outdoor Leadership School: I'd like to thank the DEQ for hosting this additional public hearing. And I'd also like to commend the DEQ, with the participating conservation districts, for their extensive work on this issue. It truly was a significant effort, and we appreciate the work.

I apologize for this next part, but I would like to respectfully request that the DEQ withdraw the categorical UAA for further revision.

We have three primary reasons for redaction or revision of the categorical UAA. The first. The application of the model is too broad, and the model itself relies on some flawed assumptions.

Many of the mountain and foothill streams with six or less cubic feet per second of average annual flow have either seasonally sufficient flows for primary contact recreation or they form pools in places where that use is attainable and often desirable. The ground-truthing done by the DEQ and the conservation districts, though admirable, do not match the scale of the model, nor was there an adequate diversity of mountain, foothill and wilderness streams. We offer that the outdoor recreation community and NOLS could assist with the gathering of this pertinent data, and we encourage the DEQ to pursue such efforts.

Additionally, the buffer distances assigned to maintain primary recreation standards around public facilities and trailheads are largely irrelevant. We, and others, have shown that many people will travel many miles from trailheads and from public access areas, even off-trail, to use small streams for recreation.

The second. The categorical UAA unfairly flips the presumption of clean water for recreation and puts the burden of proof on the public to show which of the thousands of downgraded streams should be held to a higher standard. This type of action lacks precedent nationally and is a burdensome task to put on the people of Wyoming. I believe the DEQ initially undertook this effort because completing traditional UAAs was considered a burdensome task, so to put it on the people, I think that move goes counter to the purpose and intent of the Clean Water Act.

We respectfully request DEQ to redact and revise the categorical UAA and to remove Wyoming's public wildlands and backcountry areas from its scope.

Department Response: See Approach for Identifying Waters for Secondary Contact Recreation Summary Response. Also see Changes to Water Quality/Protection of Downstream Waters and Maintaining Water Quality Summary Responses.

Christine Lichtenfels, Lander, WY: So I think there's been a wrong -- the understanding of what should be the cutoff for what primary recreation is, it has been set too high. Six cfs, you can fully immerse yourself in much less than that.

And I think the previous speaker also acknowledged that the flow regime varies, and so what might be six cfs over the year can be much higher for a significant time when people actually are in the mountains.

I think another, what's also been mentioned is that younger people, kids do -- will actually hike much further than one mile. I have a hard time understanding how a school bus policy constitutes a scientific basis for a model of how far younger folks will walk. Obviously, working with them, I've seen them hike hundreds of miles even.

Even just last week I think it was, I was coming out of the Cirque and, you know, hiking down Big Sandy Trail and the numbers of kids that were this high (indicating) that were hiking in with backpacks on, I can't even count on my two hands. There were many of them hiking quite a ways in. So I think I have that concern.

I ask that you withdraw the UAA. I would like to see -- you know, certainly, there are going to be some streams, ephemeral dry draws.

I think we might all be better served if it were done at a smaller scale, you know, different areas of Wyoming, then people could be involved, people who know those areas best and the standards might be better suited to those.

So thank you for taking my comments, and I hope you will withdraw the UAA as it is right now.

Department Response: See Approach for Identifying Waters for Secondary Contact Recreation Summary Response.

Kristin Tilly, Shoshone Conservation District: This categorical recreation UAA more accurately reflects reality. Our experience, study and site visit concur with these designations. In the late summer and fall of 2010, I logged 160 hours and 1,144 miles to visit the 18 randomly generated sites for statistically valid field verification of the accuracy of the model as our part of the statewide effort. Without this categorical UAA, 1,236 of our district's 1,609 stream miles -- that's 77 percent -- would be inappropriately and incorrectly identified as supporting primary recreation with its risk of ingestion.

Department Response: See Approach for Identifying Waters for Secondary Contact Recreation Summary Response.

Sandy Shuptrine, Teton Conservation District: Another comment that I think we have a lot of concern about is the burden of proof being shifted to the general public, and especially in the light of recent

Wyoming legislation that strictly limits the ability to access any property, including public lands, that is not one's own for data collection. It doesn't seem clear about how we're supposed to be coming to DEQ with the information that's being asked for if we feel that some stream has been inappropriately classified.

Also, DEQ's water quality rules and regulations refer to -- this is paraphrasing -- "where attainable, the highest probable water quality commensurate with fisheries and drinking water" should be sought, and we totally agree with that. And we think that this is -- and we've had a big struggle at our board meetings, because it's either we're starting from a higher standard or we're starting to have to prove that it should be a higher standard.

Department Response: See Approach for Identifying Waters for Secondary Contact Recreation Summary Response.

Dan Smitherman, Bondurant, WY: I'm here representing myself as a private citizen. I live in Bondurant, Wyoming, I'm a former outfitter, who has permitted on all three wilderness areas of the Bridger-Teton National Forest, Wyoming Range and the Popo Agie Wilderness Area on the Shoshone, and I'm here to oppose the categorical UAA for several reasons.

It appears to me that we have a process backwards. You know, rather than degrade all the water and make the public prove that it has a certain type of use, maybe we ought to protect it and have the government prove that we shouldn't use it.

And it also appears to me that the process for us to go through re-categorizing a particular stream is kind of onerous. They have to have that "long." They have to have pictures. They have to have other types of evidence.

Quite frankly, a lot of time when I'm in the backcountry, I don't have a GPS with me. I only have a camera with me, because they generally don't work. So I would like to see it reversed the other.

I'm extremely concerned over the apparent arbitrary distance measurement from one mile to a half mile, and I have some examples. And again, I apologize. I don't have specific that "long." The GPS on my horse was broke that day.

On August the 15th of this year, I took a four-year-old two miles from the nearest trailhead and watched him play in a stream that fed into a stream that you had downgraded to secondary use.

Department Response: See Approach for Identifying Waters for Secondary Contact Recreation Summary Response.

Dick Inberg, Wyoming Wilderness Association: Now, I've heard the figure bantered around here, six cfs, and so I had to do a couple of quick calculations here to kind of figure out what six cfs meant to the amount of water that we're talking about.

One cfs is 450 gallons per minute. Six cfs is 2700 gallons per minute or 161,600 gallons per hour or 3,878,000 gallons per day, which would supply any one of our major towns in Wyoming, including Riverton, where I'm from. And it will also supply the water for 420 acres of irrigation under Wyoming water law.

Department Response: See Approach for Identifying Waters for Secondary Contact Recreation Summary Response.

Cathy Meyer, Lower Wind River Conservation District: We are here to support the categorical UAA that the DEQ has proposed. We represent a district in Fremont County, that is one of three. It encompasses nearly 2 million acres, including the communities of Arapahoe, Morton, Kinnear, Pavillion, Shoshoni, Lysite, Lost Cabin, Moneta and Riverton. We represent about 24,000 citizens on natural resource issues, including, but not limited to, soil and water conservation.

The soils in our district are shallow sands, silts, loams and clays, which contain little organic matter and are low in fertility. Elevations range from 4600 to 8100 feet. Our temperatures range from minus 45 to 102 degrees sometimes. Our annual precipitation, annually precipitation, averages less than ten inches.

All flowing waters within the Lower Wind River Conservation District end up in Boysen Reservoir. Our main perennial streams are the Big and Little Wind Rivers. There are many intermittent and ephemeral streams which only flow in the spring when the snow melts or in a significant rain event.

Our conservation district has been involved with use attainability analysis since 2009. We are one of the districts that submitted a UAA for Poison Creek. If any of you are familiar with Poison Creek, it runs parallel to the highway out of Shoshoni to Casper.

Poison Creek seldom flows water. It is listed as primary. It needs to be listed as secondary. In the proposed categorical UAA, Poison Creek would be listed as primary only from the town of Shoshoni to Boysen Reservoir because it's close to a park, Boysen State Park, and to the rails to trail, places where people recreate. We support that portion of Poison Creek being listed as primary and the remainder of Poison Creek being listed as secondary. It's a no-brainer. It doesn't flow water.

We have also been involved with the field verification of this categorical UAA. We spent nearly \$2,000 in time, mileage and supplies to provide that data to the DEQ. We are very appreciative of being able to do that because we felt that it was helping to verify this UAA, which is statewide, not just for specific areas.

Department Response: See Approach for Identifying Waters for Secondary Contact Recreation Summary Response.

Leann Correll, Saratoga-Encampment-Rawlins Conservation District: The Saratoga-Encampment-Rawlins Conservation District has been very heavily involved in water quality issues for years and years. The district is very much in support of the categorical UAA in the work that they have done both now and will do in the future.

Another thing that we'd like to point out here in support of this categorical recreation UAA. This scientific model was developed and then modified, also ground-truthed and readjusted through this significant process over these years. So it wasn't like they just developed this model and then are implementing the model. There have been many adjustments, and the ground-truthing was one piece of that adjustment throughout the process. So has public input throughout that time.

We believe that this provides a better baseline than where we were before. And that's what we're trying to do is we're trying to make better uses of our resources and more target specific to those primary recreation so that we can protect them. So it provides that better baseline.

And of the 13 sites verified within the Saratoga-Encampment-Rawlins Conservation District during the summer and early fall of 2010, 77 percent of the sites were appropriately identified as secondary contact.

So if we look at that, our district alone -- and we heard another district talk about a 77 percent variance from going from primary to secondary -- we have a significant portion of that where we can tailor our resources to those primary contact.

And another added benefit of the model is that it actually classifies waters as primary contact recreation that are close to towns and schools, as we've heard, before those recreation areas.

We, as a district, understand that the streams may need to have some recreational designation adjustments. With any model, this is going to be the case. Whether we start out with it as the zero percent and everything is primary rec or we use the model and maybe start out with 77 percent accuracy in those designated as secondary to recreation, we may need to have those adjustments.

One of the things that we'd like to do as a district is encourage all of the publics to help identify those. And it's not that the individual public has to do all of the UAA site-specific work themselves, we would like to be able to work with those recreationists, work with those publics in our area to identify ones that need those adjustments, and we would help in that process, because those board members are elected by those constituents.

Department Response: See Approach for Identifying Waters for Secondary Contact Recreation Summary Response.

Jack Berger, Saratoga-Encampment-Rawlins Conservation District: I speak in favor of the UAA model. I appreciate the DEQ having another meeting other than what they were required to have.

You know, we all want clean water. You know, that's a given, you know. And I think at this point, we understand the vast amount of time and effort that the conservation districts have spent on this, along with the Wyoming DEQ.

I sure can't question the speakers tonight who have pointed out exceptions to this model. It's highly accurate. We've established that. Nobody said it was a hundred percent, but like the previous speaker said, instead of starting here at zero with site-specific UAAs, let's start here with site-specific UAAs and then tweak it from there with however we need to go on the remaining ones. It would save everybody a lot of time and effort and money to start at a higher level, and this model sure accomplishes that.

But I would encourage adopting this model and then that would allow us to focus on the streams that actually do need -- you know, can support primary contact recreation.

Department Response: See Approach for Identifying Waters for Secondary Contact Recreation Summary Response.

Phil Murphree, Wyoming Mining Association: On behalf of the Wyoming Mining Association, I appreciate the opportunity to provide additional comments on the proposed categorical use attainability analysis for recreation, which we continue to support.

During this -- during the early parts of this process, the Wyoming Mining Association members provided a large amount of data to correctly classify streams as we maintain one of the great monitoring concentrations, hydrologic monitoring concentrations, on the planet.

Department Response: See Approach for Identifying Waters for Secondary Contact Recreation Summary Response.

Rob Davidson, Council for the Bighorn Range: The Council for the Bighorn Range opposes the decision to -- this new standard, GIS-based standard, for reclassifying 87,000 acres -- miles of streams from primary contact recreation to secondary.

I have firsthand experience in this thing in leading with the Cloud Peak chapter of Wilderness Watch monitoring the streams in the Bighorns and the Cloud Peak Wilderness. We did a ten-year benthic survey, full benthic survey, of -- and hydrologic survey of the streams leaving the Cloud Peak Wilderness and their water quality. No government agency had ever done this. This was done by a nonprofit. It was done with good citizen science.

We did not do E. coli at this period because the field protocols for doing that in a wilderness setting were not sustainable and would not have been accepted by an agency, even though the survey was -- in its final report was peer reviewed by employees of the DEQ on their own time.

Department Response: See Approach for Identifying Waters for Secondary Contact Recreation Summary Response. Also see Class 1 Waters Summary Response.

Ken Hamilton, Wyoming Farm Bureau Federation: Tonight I'm making comments on behalf of the 2700 agriculture producers, many of them who are at home trying to make a living and couldn't be to this meeting, but most of those folks support the scientific process that DEQ used for this effort. And I would like to add that I believe this is something that's long been needed.

It's always been very frustrating to me to find dry gulches and a lot of draws in Wyoming classified as primary contact because it was a political decision. And I think that this is the part about the UAA that we support the most is we're moving away from politics here and we're trying to address this with a scientific process.

So once again, I would just like to say that we support the use of this UAA process.

Department Response: See Approach for Identifying Waters for Secondary Contact Recreation Summary Response.

Wayne Garman, Crook County Natural Resource District: On behalf of the Crook County Natural Resource District, we appreciate the opportunity to provide comments in support of the Wyoming Department of Environmental Quality's categorical use attainability analysis for recreation use designations on Wyoming waters.

In 2010, our district was asked to conduct field verification on 25 of the 720 randomly selected sites to provide a sufficient level of data to test the accuracy of the UAA model. The UAA for specific water bodies determined sufficient -- is to determine sufficient levels to data -- I better start over here.

The UAA for a specific water body is to determine a sufficient level of data to test the accuracy of UAA model. The UAA for a specific water body is determined based on a set of criteria that must be met to determine if the particular use can be supported.

The categorical UAA is a robust, defensible and appropriate method for designing recreational uses on Wyoming surface waters.

We believe the criteria utilized by the Department in determining primary versus secondary contact recreation uses is appropriate and reflects the intent of the standard and meets EPA expectations.

The Crook County Natural Resources District strongly supports the categorical recreation use attainability analysis proposed and adopted by the Department of Environmental Quality and submitted to EPA on December 1st of 2014. A tremendous amount of work has been put towards the categorical UAA across the state and in consultation with EPA. The staff and supervisors of CCNRD encourages the EPA to approve Wyoming's categorical use attainability analysis for designated use for recreational purposes.

Department Response: See Approach for Identifying Waters for Secondary Contact Recreation Summary Response.

Connie Wilbert, Sierra Club Wyoming Chapter: I'm here on behalf of several thousand members and supporters of the Sierra Club Wyoming chapter who are quite concerned about these proposed changes. And I'll say right up front that we oppose the categorical UAA as it's currently written and urge the DEQ to take a step back and correct some problems that are quite apparent in this plan and with a better product.

A second primary concern that we have, a kind of an overarching concern, has been discussed quite a bit here tonight already, and it has to do with some of the assumptions that underlie the model that DEQ used to come to the conclusions that I have come to. We certainly understand the desire to accurately identify streams that have so little water in them that recreational uses like swimming, playing, cooling off, immersion activities can't take place. That's great. We agree with that as a goal. We just think that the problems with the assumption that underlie this model are such that you aren't there. You haven't come to the correct conclusions and a number of specific examples have already been pointed out tonight all over the state.

People in this state are pretty outdoorsy. The Sierra Club is a great example of that. As one friend of mine said to me, boy, you Sierra Club people hike. You know how to hike, and we do. We're out there. We walk miles from designated trailheads and developed recreational areas and we often play in streams while we're out and about on the landscape. That's what we do. That's what lots of people do in this state.

On a hot summer day, it's pretty common for people to cool off in streams, both large and small, and assuming that people don't use smaller streams to -- for recreational activities, immersion activities, is simply not true. We've heard lots of examples of that tonight.

A big problem that we have with the model is the use of average annual flows to classify stream size. That completely obscures seasonal fluctuations in stream flows. Higher flows in the spring and summer correspond closely with time of high recreational use. Stream size classifications should be based on seasonal flow data, not average annual flows.

And a minimum flow of six cfs is too high. Streams with six cfs frequently have really nice wading and dipping pools and they shouldn't be arbitrarily changed to a secondary recreational use category. It doesn't make any sense. And again, we've heard many examples of that tonight throughout the state.

So I guess I'd just like to close by saying that we really believe that you have an opportunity to refine this proposal, or this decision, to step back from where you are now, refine the process and dramatically improve the outcome.

This public hearing today is a great first step, and we thank you very much for holding it, but I hope it's not the last step. I hope that you'll continue to listen to the people of Wyoming. I hope that you will openly give them the information that they deserve to have and take advantage of what they have to offer you to come to the best possible outcome of this process.

Department Response: See Approach for Identifying Waters for Secondary Contact Recreation Summary Response.

Michael Henn, Sublette County Conservation District: I'm here to stand in support of the categorical UAA.

There's been a lot of effort put into the development of the model. And a model is just that. It's been mentioned before, it's to start somewhere, start at a baseline. It's not supposed to be a hundred percent perfect, out the door, the model is accepted, everybody goes home and nobody looks back. It's developed to set a baseline, and then a few -- you know, the examples that have come forth today might be site-specific UAAs that would qualify for that designation.

Sublette County put in in 2010 did 63 random sites out of 720 that the conservation districts around the state did. Site verifications ought to help beef-up the model and make it as accurate as possible with the time allowed.

You know, models are meant to be able to summarize some series of data or something that just physically can't be done with the manpower at hand and that's why you have a model and that's why you try to get as accurate as possible so you can focus your dollars and your manpower to get to those areas that might be -- might need adjusted down to secondary or up to primary based on the effects of that our the outputs of that model.

I appreciate all the comments from all the people that have showed up tonight and think that within our district, our board and our staff has realized that once this model, if adopted, is not the end of the road. We will continue to address water bodies within Sublette County, which are roughly 7500 stream miles, to make sure that it's accurately represented and held to the appropriate standard for recreational use.

Department Response: See Approach for Identifying Waters for Secondary Contact Recreation Summary Response. Also see Rationale for Modifying Recreation Designated Uses.

Tori Dietz, Washakie County Conservation District: On behalf of the Washakie County Conservation District board of supervisors, we appreciate this additional comment opportunity and want to let you know that we strongly support the Wyoming DEQ's categorical use attainability analysis for recreational use designations on Wyoming's waters. Our conservation district, since 1995, has taken a leadership role in water quality assessment, planning and implementation for streams within Washakie County. We work very closely with our landowners and homeowners on best management practices and have gained intricate knowledge and expertise on our local watersheds.

In 2010, we were specifically involved with assisting DEQ with ensuring their categorical UAA for contact recreation is scientifically defensible and accurate. This involvement included our field verification of 16 sites that have been randomly -- that were randomly selected by DEQ using their UAA GIS model.

Field verification included collecting GPS points, photos, watershed information and interviews with the landowners and land managers to gain historical and site-specific information. Once our on-the-ground verification was compared to the predictions of the DEQ GIS model, we found we were in a hundred percent agreement in that the secondary use designations were substantiated where there was low to zero flow and a low chance of ingestion. We believe in ensuring that those waters capable of supporting primary and secondary contact recreation uses are accurately designed so that human health is protected.

Department Response: See Approach for Identifying Waters for Secondary Contact Recreation Summary Response.

Chris Bonatti, Casper, WY: I'm a resident here in Casper. I'm an engineer. I'm a small businessman. I'm an avid paddler and a backpacker and very concerned by what I'm hearing here this evening.

I came into the room undecided and somewhat uninformed about the issue, but I have to say I agree predominantly with the remarks from the Sierra Club, from the Wyoming Outdoor Council.

And I should say also I'm a member of the Izaak Walton League of America. I think while I don't speak for that organization, I think they would predominantly agree with these other organizations on those grounds.

Speaking as an engineer, six cfs equates to about 5,000-some gallons per minute. If I were to wash my car with a source of 5,000 gallons per minute, I think the feds would be in and telling me to shut it down. That's an awful lot of water and certainly sufficient to create pools of immersible depth.

Department Response: See Approach for Identifying Waters for Secondary Contact Recreation Summary Response.

Cathy Rosenthal, Wyoming Association of Conservation Districts: These comments are in addition to WACD's comments submitted to DEQ in support of the categorical UAA, and I'm primarily going to address the surveys conducted in 2010.

I helped collect data verifications within the Cody Conservation District -- excuse me, Dubois-Crowheart Conservation District and Crook County Natural Resource District on over 100 sites that were randomly selected by DEQ in those areas combined from large flowing waters to dry draws.

Before 2002 -- sorry, before 2010, as Mr. Miyamoto mentioned earlier, we already knew before doing this effort that not all waters within Wyoming should be designated as primary recreational, part in due to previously submitted site-specific UAAs, as previously mentioned tonight by some of the conservation districts, and personally through starting a site-specific UAA with Campbell County Conservation District that was put on hold due to this categorical UAA.

The model and verification efforts significantly strengthened what we knew. Specifically, areas that were visited on water bodies, primarily on private property, with little to no access and little to no flow, and ephemeral dry draws on private BLM and state lands. This, to me, significantly -- this, to me, signified the statewide UAA.

As for sites visited on flowing water bodies, the majority of these remain primary. For those that didn't, the change was most likely due to limited access. There were even water bodies evaluated with very little flow, less than two cfs, on Forest Service lands that did remain primary due to access to trailheads and campgrounds, to name just a few.

In the 100-plus sites I personally visited, the model and our verifications were over 75 percent accurate. We understand that the model is not 100 percent accurate and that site-specific UAA's may be needed.

That said, I believe that the approval of the categorical -- the categorical UAA, that the majority of Wyoming's waters would be much more accurately classified, would save time and money on doing site specific UAAs and focus efforts and resources on water bodies of utmost importance to our health and well-being.

Department Response: See Approach for Identifying Waters for Secondary Contact Recreation Summary Response.

Shaun Sims, Wyoming Association of Conservation Districts: Shaun Sims, President of the Wyoming Association of Conservation Districts and the Uinta County Conservation District supervisor, citizen of the state and a landowner.

I want to talk in support of the UAA model. We, as districts, went out in 2010 with 720 randomly selected sites as has been mentioned time and time again. In Uinta County, I personally went with our district manager to some of these sites. We had 31 sites. Some of them had water, 16 of them. 15 of them did not. Some of them were very remote places. Some of them were close to towns. That data was gathered and sent to DEQ so that they could adjust their model on those areas that it did not reflect accurately and in doing so increase the accuracy of this model.

Department Response: See Approach for Identifying Waters for Secondary Contact Recreation Summary Response.

Kelly Booth, Lake DeSmet Conservation District: I am here on behalf of the Lake DeSmet Conservation District board of supervisors in Buffalo, Wyoming. We appreciate the change to further comment in support of the Wyoming DEQ's categorical use and attainability analysis for recreational use designations on Wyoming waters conducted by the Lake DeSmet Conservation District.

The Lake DeSmet Conservation District was established in 1947, and its boundaries are the northern half of Johnson County. The Bighorn National Forest is within our boundaries and also parts of the Cloud Peak Wilderness Area.

The Lake DeSmet Conservation District mission statement is as follows: The Lake DeSmet Conservation District is dedicated to the development and implementation of programs, to provide leadership and technical assistance for the conservation of Johnson County's natural resources, agricultural heritage and resource base, to promote and control soil erosion, to promote and protect the quality and quantity of Wyoming's waters and all other natural resources, to preserve and enhance wildlife habitat, to protect the tax base and to promote the health, safety and general welfare of the residents of the county through responsible conservation planning. The Lake DeSmet Conservation District feels that the DEQ's new designations continues to meet our goals in our mission statement.

The district was given 27 randomly selected sites, some of which were in very remote areas that required hiking several miles into the backcountry and wilderness areas within our district boundaries. Some sites we went to could only be reached by foot. Not even a horse could get to some of the locations I went to. All of the sites within the Lake DeSmet Conservation District were visited during the peak recreation season, between July 9th and October 1st of 2010.

The year 2010 was an average and typical year for Johnson County with normal rainfall and temperature. No extremes were noted. After all of the data had been gathered and evaluated by WDEQ on all sites on the Bighorn National Forest were proposed to remain primary, even if their flows were well below the six cfs required for primary designations.

The Bighorn National Forest that lies within the Lake DeSmet Conservation District boundary is used heavily during the recreation season. Most streams are located in or near high recreational areas such as Circle Park where a high use exists outside of the actual Forest Service campground. Circle Park Creek itself is under two cfs. The staff and the US Forest Service acknowledge that this and all other forest sites were in high use areas where camping and recreation is widely dispersed and should remain primary for this reason alone, regardless of flow.

The proposed secondary designations that occurred on private land were well below the six ccf -- pardon me, six cfs were inaccessible to the general public. Some were miles from a public road. One site I went to, I had to hike into -- over a mile into private land. Some were completely dry and showed no signs of even riparian plants.

We can assure the public that the Lake DeSmet Conservation District's employees conducted these analyses with the best interest of the people of the northern Johnson County and the natural resource itself.

So in summary, the Lake DeSmet Conservation District strongly supports the categorical recreation use attainability analysis proposed and adopted by the Wyoming DEQ and submitted to the EPA on December 1, 2014.

Department Response: See Approach for Identifying Waters for Secondary Contact Recreation Summary Response. Also see Class 1 Water Summary Response.

Ted Lapis, Public Land User Committee: I was taught by my father to tell anybody who asked when I was three or four years old, "Where did you get the fish? Right in the mouth." And when I was getting ready for hunting, I was taught to answer the questions about the deer, "Right behind the shoulder," and the divulging of specific information to protect a particular water area is going to raise a lot of hackles.

Department Response: See Approach for Identifying Waters for Secondary Contact Recreation Summary Response.

4.6 Public Process

Phil Powers, Executive Director, American Alpine Club: Like many others, the AAC learned of your decision well after it had become final. I understand your agency is conducting a public hearing in Casper to accept public comment on your decision. We are not able to attend the hearing, but I hope you will consider our comments as you consider next steps. We hope you will withdraw your decision and protect all the streams in Wyoming at the highest levels.

With more time, we could provide specific stream information, but that is not realistic in the timeframe you have provided.

Department Response: See Public Process Summary Response. Also see Changes in Water Quality/Protection of Downstream Waters and Maintaining Water Quality Summary Responses.

Eric Concannon, Lander, WY: I am writing to request the Wyoming Department of Environmental Quality withdraw the flawed “Categorical Re-designation of Streams from Primary Contact Recreation to Secondary Contact Recreation,” issued in August of 2014.

Department Response: See Public Process Summary Response.

Tim Hudson, Lander, WY: I ask the Wyoming DEQ to withdraw its decision to categorically redesignate 76 percent of the state’s streams from primary to secondary contact recreation.

What I am worried about is the fact that I am only now learning of the DEQ’s decision to downgrade 76 percent of Wyoming’s streams to secondary contact recreation. I have lived in Wyoming all my life precisely because its environmental quality and outdoor opportunities are unrivaled. I respectfully ask that the DEQ reconsider this flawed decision. Instead, I ask that the agency solicit input from the many diverse recreational users of these waters. Requiring the public to attend a single hearing armed with GPS coordinates of every waterway where they might recreate – and all of this after a decision has already been made – does not strike me as following the spirit of the Clean Water Act. I am hopeful that the DEQ can do better by the public it exists to serve.

Department Response: See Public Process Summary Response. Also see Changes in Water Quality/Protection of Downstream Waters, Maintaining Water Quality, and Recreational Designated Uses and Water Quality Criteria Summary Responses.

Ty Cook, Jackson, WY: I encourage the DEQ to revise these downgrades and to use a more user friendly comment system that is email based and non-technical.

Department Response: See Public Process Summary Response. Also see Changes to Water Quality/Protection of Downstream Waters Summary Response.

Mara Gans, Lander, WY: I am writing to object the far-sweeping downgrading of Wyoming’s stream water quality that is proposed in the DEQ’s UAA for contact recreation. I request that you table the current proposal and start this process over so that you can obtain better information and understand

about recreational use of low-flow streams in our state. Specifically, you need to reach out to more of the general public as well as to outdoor recreation businesses, permittees and educational institutions.

Department Response: See Public Process Summary Response. Also see Changes in Water Quality/Protection of Downstream Waters and Recreational Designated Uses and Water Quality Criteria Summary Responses.

Michelle Irwin, Green River, WY: I am writing to ask that the DEQ withdraw the “Categorical Re-designation of Streams from Primary Contact Recreation to Secondary Contact Recreation.”

Please hold our water and environment with higher regard, and withdraw this rule. And please, change your policy to accept electronic comments. You are a public agency, and ought to make public comments easier to submit.

Department Response: See Public Process Summary Response. Also see Changes in Water Quality/Protection of Downstream Waters and Recreational Designated Uses and Water Quality Criteria Summary Responses.

Alexander May, Laramie, WY: I write to respectfully ask the Wyoming Department of Environmental Quality to withdraw its August 20th “Categorical Re-designation of Streams from Primary Contact Recreation to Secondary Contact Recreation.”

A successful rule will be one that incorporates feedback from a diversity of recreational users, and one that is much more targeted and limited in terms of the streams that will be “downgraded.”

Department Response: See Public Process Summary Response. Also see Changes in Water Quality/Protection of Downstream Waters and Recreational Designated Uses and Water Quality Criteria Summary Responses.

Linda Ransom, Evansville, WY: As a very concerned citizen and Wyoming native, I write to respectfully ask the Wyoming Department of Environmental Quality to withdraw its August 20th “Categorical Re-designation of Streams from Primary Contact Recreation to Secondary Contact Recreation.”

A successful rule will be one the incorporates feedback from a diversity of recreational users, and one that is much more targeted and limited in terms of the streams the will be “downgraded.” Please restart this process and provide better transparency, public outreach and hearings in other parts of the state.

Department Response: See Public Process Summary Response. Also see Changes in Water Quality/Protection of Downstream Waters and Recreational Designated Uses and Water Quality Criteria Summary Responses.

Larry Roberts, Casper, WY: I do not support the reduction of water quality standards. There has not been much general public input on this decision.

Department Response: See Public Process Summary Response. Also see Changes in Water Quality/Protection of Downstream Waters and Recreational Designated Uses and Water Quality Criteria Summary Responses.

Jeff Troxel, Cody, WY: I write to respectfully ask the Wyoming Department of Environmental Quality to withdraw its August 20th “Categorical Re-designation of Streams from Primary Contact to Secondary Contact Recreation.”

Department Response: See Public Process Summary Response.

Brianna Jones, Executive Director, Equality State Policy Center: As background, I wrote an opinion piece on this topic, published in the Casper Star Tribune on August 21, 2015. Enclosed is a copy as a portion of ESPC’s comments for the record.

With this letter, we wish to reaffirm the concerns raised in the enclosed column and point out that the DEQ’s actions have not achieved the goals of transparency and good governance.

The reclassification of these streams will most directly impact the health and safety of the recreating public, yet the agency failed to engage this very constituency. Recreation is a core of Wyoming values: we want to pass on favorite camping, hunting and fishing spots to our children, and ensure these places remain safe and pristine for future generations. And let’s not forget, tourism and outdoor recreation are Wyoming’s second largest economic sector. The DEQ should recognize the valuable role recreation plays in our state and involve all stakeholders in developing standards that work for all our citizens.

We encourage the DEQ to revisit this issue with a new, more open and collaborative process. ESPC will readily offer assistance in designing this and future processes. It may take more time, but proactive and open decision-making will result in better public policy – a win for all Wyomingites.

It is a challenge – one I’m certain the DEQ and all Wyoming agencies can meet to – deliberately cultivate a culture of openness and public access to government functions and decisions.

Department Response: See Public Process Summary Response. Also see Changes in Water Quality/Protection of Downstream Waters and Recreational Designated Uses and Water Quality Criteria Summary Responses.

Jennifer Hinkhouse, District Manager, Campbell County Conservation District: As a local government, CCCD believes that it is imperative for the general public to have opportunities to comment on and participate in any process CCCD conducts. As such the CCCD held board meeting on, July 13, 2010, August 9, 2010, September 7, 2010 and October 12, 2010 where the UAA model was included on the agenda. At these meeting, which are open to the public, there was discussion about the process of field verifications, results and thee comments on the UAA model that were submitted to WDEQ. All minutes from the meetings are available to the general public. Information regarding staff time dedicated to UAA field verification was also included in CCCD’s bi-monthly newsletter and distributed around the county. At no time was any public input received by our CCCD.

Department Response: See Public Process Summary Response.

Wayne Garman, Chairman, Crook County Natural Resource District: DEQ offered numerous opportunities for input on the Categorical UAA and invited the submission of additional site specific information from the public and user groups.

Lastly, the ability to submit a site specific recreational Use Attainability Analysis for Submission to DEQ to change a designation is available under this proposal. This allows entities to submit site specific information to address those waters they feel may or may not support recreational uses as identified in the UAA. The District commends the DEQ's ongoing dedication to working with the public to amass quality data for guiding decisions on how to best protect our waters and the public.

We also appreciate the DEQ's overall approach in conducting a Categorical UAA. This approach has allowed interested parties to weigh in on proposed designations in one public process, spanning three to four years, versus individual public notice processes occurring over extended periods of time on hundreds of individual UAAs. We urge other parties interested in collaborating with the DEQ to approach proposed amendments to use designations with the same rigorous methods and data collection used to conduct the comprehensive UAA.

Department Response: See Public Process Summary Response.

Tyler and Liz Lauck, Wheatland, WY: Despite claims that are being made, these classifications were done with full opportunity for public input. There were at least two public meetings and notice was published in statewide media.

Department Response: See Public Process Summary Response.

Don McDowell, Chair, Lingle-Fort Laramie Conservation District: We spent many hours gathering field verification data, discussed the project at least twice in our regular board meetings, and accepted the findings in our October 2010 meeting. I state this because as a local unit of government, all regular monthly meetings are advertised and open to the public. The public had ample opportunity to be part of this process.

Department Response: See Public Process Summary Response.

Terry Hayes, JW Hendry and Row Lucas, Lower Wind River Conservation District: For those streams that are inaccurately classified in the Categorical UAA, a site specific UAA can be written to request a change in classification by WDEQ.

Department Response: See Public Process Summary Response.

Ralph Brokaw, Chairman, Medicine Bow Conservation District: Site specific use attainability analysis can be very helpful in fleshing out the model in certain cases and remains an option. All the tools currently available for use attainability analysis are still options if there is disagreement about the classification of a particular body of water.

Department Response: See Public Process Summary Response.

Kevin Gaukel, Chairman, Niobrara Conservation District: The significance of the Categorical UAA to the recreational use designation versus the actual use has been discussed several times over the years at District Board Meetings, which are open to the public.

Department Response: See Public Process Summary Response.

Steffen Cornell, Resource Specialist, Meeteetse Conservation District: While we may disagree with the EPA in their assertion that proper public process was not followed previously we remain encouraged and optimistic that this public hearing will fully satisfy EPA and that they will move forward with approving the UAA as it has proved to be the most logistically feasible and economically appropriate means to identifying waters correctly.

Department Response: See Public Process Summary Response.

Kevin Gaukel, Chairman, Niobrara Conservation District: There have been numerous opportunities for public input as well as the document and map being on the WYDEQ website for public viewing for almost two years.

Department Response: See Public Process Summary Response.

Jack Berger, Chairman, Saratoga-Encampment-Rawlins Conservation District: We understand some streams may need recreational designation adjustments. The ability to submit a site specific recreational UAA for submission to WDEQ to change a designation is still available under this proposal. This allows for those instances where someone may have failed to participate in the numerous public input processes and feel the Categorical UAA failed to identify recreational uses, to submit site specific information to WDEQ to address those waters.

We believe that WDEQ Categorical Recreational UAA public input process was adequate and appreciate the multiple opportunities to provide input. WDEQ provided ample opportunity for public involvement and comments. The public comment process for this effort was extensive, spanning three to four years, and made available to any interested party. SERCD monthly, public Board meetings are advertised and we discussed this topic numerous times throughout the WDEQ Categorical Recreational UAA development process.

Department Response: See Public Process Summary Response.

Scott Sims, Manager, Sims Cattle Company LLC: This process maintains full opportunity for individual streams to be upgraded based upon submission of specific evidence.

Despite claims that are being made, these classifications were done with full opportunity for public input. There were at least two public meetings and notice was published in statewide media.

Department Response: See Public Process Summary Response.

George Kelso, Chairman, South Big Horn Conservation District: Throughout this process, the progress of the Categorical UAA development, its purposes and our role in it was frequently discussed in our monthly Board meetings, which are regularly scheduled and public participation is openly encouraged. We had 4 meetings in 2010 in which this was a significant topic of discussion. The development of the Categorical UAA was a highly open process with multiple opportunities for public involvement. It is disingenuous for some to bury their heads in the sand while the Categorical UAA was developed and discussed in many public bodies, then claim lack of knowledge at the very end.

Department Response: See Public Process Summary Response.

Dan Jackson, Chair, South Goshen Conservation District: Many hours were spent gathering field verification data and the projects were discussed extensively at least three board meetings in 2010. I state this because as a local unit of government, all regular monthly meetings are advertised and open to the public. The public had ample opportunity to be part of this process.

Department Response: See Public Process Summary Response.

Michael Henn, District Manager, Sublette County Conservation District: WYDEQ offered numerous opportunities for input on the Categorical UAA and invited the submission of additional site specific information from the public and user groups.

The ability for SCCD to submit a site specific recreational Use Attainability Analysis to WYDEQ to change a designation is still available under this proposal. This allows SCCD the flexibility to change designations on streams if we find the Categorical UAA placed a stream in the wrong category.

Department Response: See Public Process Summary Response.

James Sedman, Chair, North Platte Valley Conservation District: Many hours were spent gathering field verification data and the projects were discussed extensively at least three board meetings in 2010. I state this because as a local unit of government, all regular monthly meetings are advertised and open to the public. The public had ample opportunity to be part of this process.

Department Response: See Public Process Summary Response.

Shaun Sims, President, Wyoming Association of Conservation Districts: This input supplements comments submitted by the Association to DEQ, in response to public notices and solicitation for input and comment issued by the Department, on September 26, 2013; March 14, 2014 and February 23, 2015. In addition to these specific opportunities provided by the Department to provide input and comment on the Categorical Use Attainability Analysis, the Association also commented on the process during Chapter 1 revision comment periods and the revision of the Methodologies for Determining Use Attainability policy revisions, due to the interrelationship of these processes.

DEQ offered numerous opportunities for input on the Categorical UAA and invited the submission of additional site specific information from the public and user groups.

The ability to submit a site specific recreational Use Attainability Analysis for submission to DEQ to change a designation is still available under this proposal. This allows for those instances where some may have failed to participate in the numerous public input processes and feel the categorical UAA failed to identify recreational uses, to submit site specific information to address those waters. However, the percentage of waters this will occur on is greatly reduced under the categorical designation changes from a statewide perspective. This approach has allowed interested public to weigh in on proposed designation in one public process, spanning three to four years, versus individual public notice processes occurring over extended periods of time on hundreds of individual UAAs.

Department Response: See Public Process Summary Response.

Jonathan Downing, Executive Director, Wyoming Mining Association: The Wyoming Department of Environmental Quality/Water Quality Division (WDEQ/WQD) has already provided adequate opportunity for the public to comment on this project. Public notice was posted on WDEQ/WQD's web

page and public notice e-mails were also provided. All of this is information that was available to the general public. Previously WMA provided comment regarding this project as did the US Forest Service, a number of conservation districts, and the Environmental Protection Agency. This additional hearing is not required by will allow ample opportunities for all to express their opinions.

WMA also encourages WDEQ/WQD to periodically review and update the web map as more information is gathered through the state and individual UAA's are developed.

Department Response: See Public Process Summary Response. WDEQ/WQD will update the web map as any site-specific UAAs are finalized.

Andy Blair, Lander, WY: I write to respectfully ask the Wyoming Department of Environmental Quality to withdraw its August 20th "Categorical Re-designation of Streams from Primary Contact Recreation to Secondary Contact Recreation."

A successful rule will be one that incorporates feedback from a diversity of recreational users, and one that is much more targeted and limited in terms of the streams that will be "downgraded."

Department Response: See Public Process Summary Response. Also see Changes in Water Quality/Protection of Downstream Waters Summary Response.

Dave Hohl, Pinedale, WY: In regard to the situation that is the subject of this hearing, recreation use reclassification of state waters, I feel the DEQ has missed the mark. Their website indicates they have been working with the public on this for 5 years yet this is the first public hearing on the issue and is being held after the decision has been made. Based on the citizen interest shown here I submit that previous public involvement has been extremely low key, and obviously inadequate, if not in violation of DEQ's policies and regulations.

As stated above I believe the DEQ process has been inadequate at best, and the results flawed. I request the DEQ start over, defining the problem and issues, and work with, in a positive manner, as partners, its principle clients, we citizens.

Department Response: See Public Process Summary Response.

George Jones, Laramie, WY: State-wide reclassification of streams has the potential to affect a great number of people, and it should be done after they are provided ample opportunity to study the proposal, think about it, and let the Department know what they think of it. Unfortunately, the Department's current effort falls short in this regard.

Department Response: See Public Process Summary Response.

Linda Olinger, Riverton, WY: I write to respectfully ask the Wyoming Department of Environmental Quality to withdraw its August 20th "Categorical Re-designation of Streams from Primary Contact Recreation to Secondary Contact Recreation."

A successful rule will be one that incorporates feedback from a diversity of recreational users, and one that is much more targeted and limited in terms of the streams that will be "downgraded."

Department Response: See Public Process Summary Response. Also see Changes to Water Quality/Protection of Downstream Waters Summary Response.

Bruce Pendery, Logan, UT: I write to respectfully ask the Wyoming Department of Environmental Quality to withdraw its “Categorical Re-designation of Streams from Primary Contact Recreation to Secondary Contact Recreation.”

A successful rule will be one that incorporates feedback from a diversity of recreational users, and one that is much more targeted and limited in terms of the streams that will be “downgraded.”

Department Response: See Public Process Summary Response. Also see Changes in Water Quality/Protection of Downstream Waters Summary Response.

Leslie Peterson, Wilson, WY: Though I’ve read of your methodology and reasons for downgrading the classification of water quality widely throughout Wyoming, I am appalled at what DEQ has done and how it was done.

Your lack of communication with recreational interests and very close contact with agricultural representatives through the course of the work has set the Department back centuries in terms of the respect with which it has always been viewed by most Wyoming conservationists. Even though the department is perpetually underfunded, understaffed and bullied by some members of the legislature, there has always been confidence that there were good people down there, trying to do the right thing. That faith has been badly shaken. The idea that people could only express their opinions by traveling many miles to Casper was outrageous and even now, your refusal to allow e-mailed comments is reprehensible. I am mailing this letter, but will go to the trouble of faxing it as well because I have no faith that it will be considered if the mail is one day late.

Perhaps you should just start over and give the citizens of this State another year of field work to be able to delineate a great number of these streams in a much more careful fashion.

I’m very disappointed about this whole process and I hope that the EPA will be too. It is my hope that the whole process will be reconsidered, delayed and/or abandoned.

Department Response: See Public Process Summary Response.

Henry Phibbs, Wilson, WY: I am writing to you regarding the DEQ proposal to allow five times greater E. coli pollution in more than three quarters of the streams in Wyoming.

I am strongly opposed to both the substance of this proposal and the process used to develop it.

As a child of Wyoming who spent wonderful recreational time in the Big Horns, Medicine Bows, Snowies, Absarokas as well as the Tetons, I ask that you stop the reclassification process statewide until a more public and selective process is established.

Department Response: See Public Process Summary Response. Also see Changes in Water Quality/Protection of Downstream Waters and Recreational Designated Uses and Water Quality Criteria Summary Responses.

Connie Wilbert, Associate Organizer, Sierra Club Wyoming Chapter: Our members and supporters have several concerns with the proposed changes in stream classification. We'd like to highlight these, and ask that the Department take steps to remedy the shortcomings of the current proposal.

One big concern relates to the failure of the Department to communicate with the citizens of Wyoming about this proposed change. Many people knew nothing about this proposed change until very recently, and they do not believe the Department has provided them with a reasonable opportunity to be involved in the decision. We therefore request that the Department give the public more time to learn about these proposed changes and more time to express their opinions and to share their knowledge about specific streams to the Department. We request that the Department hold additional public hearings on the proposed changes in communities throughout Wyoming, with clear maps and descriptions of the affected stream, so that everyone can understand what is being proposed and can share their personal knowledge of how these streams are used.

The Department has a good opportunity to refine this proposal and dramatically improve it. While today's public hearing is a good first step, we very much hope you will continue to listen to the people of Wyoming who are deeply concerned about this proposal. Please take the time you need to refine this proposal, and please allow the people who use our public lands and streams to fully participate in the process.

Department Response: See Public Process Summary Response.

Tim Sullivan, Chairman, Albany County Commissioners: I am writing to request that the DEQ hold a public hearing in Albany County regarding its decision to reclassify much of the state's surface waters from primary contact recreation to secondary contact recreation. My interest in making this request is to encourage greater citizen awareness of the decision and more public participation in the process. I believe that a hearing in Laramie could help achieve these goals.

As you know, Albany County is home to a great number of recreation users and outdoor enthusiasts, many of whom use streams in the Snowies and elsewhere that are affected by this reclassification.

I do understand there is an opportunity for people to provide written comments but I believe you could achieve more and quite valuable citizen involvement by way of oral statements and testimony at a live hearing.

Department Response: See Public Process Summary Response.

Daly Edmunds, Regional Policy Coordinator, Audubon Rockies: Audubon Rockies is respectfully requesting that the DEQ withdraw its August 2014 decision. Withdrawing the decision does not mean that the aspects of the analyses completed to date are not retained but instead ensures a more transparent, robust, and inclusive process. We acknowledge that there were two comment opportunities years ago but lack of public participation on such a large proposal reflects how few members of the public knew of these. To that end, Audubon Rockies requests that DEQ open another comment period to allow recreational users, including individual members and Audubon chapters around the state, an opportunity to engage on the issue and provide testimony.

Many people directly affected by the decision were not included in the process and many assumptions made about recreational activities were incorrect. Therefore this sweeping downgrade in water quality needs to be re-evaluated. We respectfully request that DEQ open another comment period to allow

recreational users, including individual members of the public and independent Audubon chapters around the state, an opportunity to engage on the issue and provide testimony. As part of this process, we strongly encourage that there public meetings around the state that would afford members of the public an opportunity to participate.

Department Response: See Public Process Summary Response. Also see Changes to Water Quality/Protection of Downstream Waters and Recreational Designated Uses and Water Quality Criteria Summary Responses.

Andrew and Nancy Carson, Wilson, WY: Therefore, we voice our strenuous opposition to the DEQ's actions with regard to this water quality downgrade and ask that such steps be reversed, or rejected.

Please keep us informed of any actions related to this decision as we move forward.

We do appreciate that the DEQ is finally accepting written comments and also hope you will hold public hearings across the state, so Wyoming citizens can share their clear objection to lessening water quality standards for streams throughout the state.

Department Response: See Public Process Summary Response. Also see Recreational Designated Uses and Water Quality Criteria Summary Response and Changes in Water Quality/Protection of Downstream Waters Summary Response.

Nick Dobric and Jenny DeSarro, Greater Yellowstone Coalition: On behalf of the Greater Yellowstone Coalition, I would like to request that a public hearing be held in Jackson, WY to accept public comment on the DEQ's Categorical Use Attainability Analysis for Recreation.

We understand that the DEQ has scheduled a public hearing in Casper on September 16th to accept public comment on the decision. I hope you will understand that for many of our members, the time, cost and inconvenience of attending a hearing in Casper is a barrier to full and active public engagement.

In addition to holding a public hearing in Cody, we request a 60-day extension of time to submit written comments on the UAA. The UAA document, and the issues it addresses, are difficult and complex and therefore deserve a thorough and thoughtful review, a review that unfortunately is not possible in the current timeframe.

Department Response: See Public Process Summary Response.

Gary Cukjati, Director, National Outdoor Leadership School : I write this letter on behalf of the National Outdoor Leadership School (NOLS), Sweetwater Fishing Expeditions, Wyoming Catholic College, and the Central Wyoming College Outdoor Education and Leadership Program. We are writing to request the Wyoming Department of Environmental Quality (WDEQ) expand the opportunity for impacted stakeholders to express their views on the Categorical Use Attainability Analysis for Recreation (UAA) and the downgrade of recreational water quality in streams across the state of Wyoming.

As businesses, institutions, and citizens, we are vested stakeholders in the health and purity of Wyoming's streams. The waters of the Wind River Range and the surrounding high plains support both

our personal recreation and professional operations. Many of the streams downgraded in the UAA are frequently used by both backcountry recreation enthusiasts and professionals.

While we recognize WDEQ strove to follow the letter of the law regarding public outreach, we feel that additional outreach and opportunity for public comment is necessary. Given the great extent of this study's effect on Wyoming waterways, the likelihood that this categorical, state-wide UAA is the first of its kind in the nation, and the fact that no recreation interests have yet weighed in on the decision, additional public review and participation is warranted.

It is apparent that the outdoor recreation community and the greater body of citizens residing near the downgraded waters were-and most likely still-entirely unaware of the Categorical UAA and its significance prior to WDEQ's passage of the rule. US EPA Region 8 wrote in a September 25, 2013 comment letter to WDEQ on the Draft Categorical Use Attainability for Recreation,

"The EPA is particularly interested in seeing the public feedback on pools within the low flow streams addressed by the UAA that are used for or would support primary contact recreation. Our understanding is that WDEQ proposed primary and secondary use designations based on the best information available to the state, but feedback from people that live near the streams at issue is critical in making the right environmental decision (emphasis added)."

US EPA Region 8 reinforced this point in its letter June 3, 2015 to WDEQ requiring an additional public hearing. EPA reiterated,

"As noted in our prior comment letters, the EPA suggest that during this hearing process WDEQ specifically reach out to recreational user groups. Feedback from people that live near or recreate in such streams regarding existing and potential uses is critical in designating the appropriate recreational use."

We respectfully request WDEQ to:

1. *Host an additional hearing in Lander.* Lander, in the foothills of the Wind River Range, is a prominent access point to the mountains and the home base for many outdoor recreationists, outfitters, and outdoor educational programs and institutions. The public hearing should serve to enhance the regional citizens' understanding of the study and outcomes of the rule, and should provide opportunity for the public to give both written comment and oral testimony. Hearings in local communities provide the opportunity for meaningful conversation and idea-sharing, building constructively beyond simple statements of concern.
2. *Give careful consideration and response to written comments.* We ask that written comments be accepted by post and by email, and that they be given the full weight, evaluation, and response that oral testimony would receive. It is currently unclear from WDEQ's last public UAA notice as to whether emailed comments are being accepted. Written comments allow those who would be unable to attend an in-person hearing to weigh in on the rule, and email is the easiest form of communication for both participants and for the agency's personnel to process. This is especially relevant for outfitters, outdoor camps, environmental educational institutions, and other who operate businesses on public lands and waterways; a group that is disproportionately impacted by the UAA. These entities often schedule their trips and services with clients months out in advance, have limited free time through the summer, and would be unable to attend a public meeting.

3. *Extend the open comment period through September 15th, 2016.* Recent press coverage and the reactions of communities across Wyoming demonstrate that many people are just now hearing about the rule for the first time, and many have yet to learn of it at all. WDEQ stated,

“Documentation should be sufficient for WDEQ/WQD to confirm whether primary contact recreation is an existing or attainable use, or not, on a particular stream. Such information may include photographs, flow data, and other information at the level of detail described in the worksheets contained in Appendix C of the Categorical UAA. Modification of the surface water designation established in the Categorical UAA will require the presentation of information sufficient to identify: (1) the location of the streams (e.g., latitude and longitude, object ID provided in the web map, etc.) and (2) the existing and potential recreational activities associated with the stream, given the physical condition of the stream.”

The time remaining before the September hearing in Casper is insufficient for groups and individuals to adequately review and compose written comments or oral testimony, much less gather the extensive data required to demonstrate primary contact recreation as an attainable use. This one-year extension of the comment period would allow groups to collect data through another summer field season to adequately convey what streams should be held to a primary recreation standard.

We welcome any opportunity to work with WDEQ to enhance public knowledge of, and participation in, the Categorical Use Attainability Analysis.

Department Response: Public Process Summary Response. Also see Recreational Designated Uses and Water Quality Criteria Summary Response and Changes in Water Quality/Protection of Downstream Waters Summary Response.

Lloyd Dorsey, Conservation Director, Sierra Club Wyoming Chapter: On behalf of the Sierra Club Wyoming Chapter, I would like to request that a public hearing be held in Jackson, Wyoming, to accept public comment on the DEQ’s Categorical Use Attainability Analysis for Recreation.

Based on recent news coverage, we understand that the DEQ has scheduled a public hearing in Casper on September 16th to accept public comment on the decision. I hope you will understand that for many of our members, the time, cost and inconvenience of attending a hearing in Casper is a barrier to full and active public engagement.

In addition to holding a public hearing in Jackson, we request a 60-day extension of time for the public, interest groups, and other stakeholders to submit written comments on the UAA. The UAA document, and the issues it addresses, are difficult and complex and therefore deserve a thorough and thoughtful review, a review that unfortunately is not possible in the current timeframe.

Department Response: Public Process Summary Response.

Carlin Girard, Water Resources Specialist, Teton Conservation District: The Teton Conservation District appreciates Wyoming Department of Environmental Quality’s (WDEQ’s) willingness to accept input through the Sept. 16th Public Hearing (Casper, WY) on the Categorical Use Attainability Analysis recently adopted by your Department. Furthermore, we want to applaud the acceptance of public comment through written comments.

In the interest of our constituents in Northwest Wyoming, we would like to request that an additional public hearing be provided on the Western side of the state. Our District feels that one additional hearing in either Jackson or Lander would greatly improve the ability for our constituents to attend and participate. There are three specific reasons why we feel this request is justified.

[1] The distance to Casper from Jackson is 280 miles each way, and takes roughly 5 hours to complete one-way. The time and costs associated with this travel, which would likely require a hotel fee are not trivial. Having a meeting in Jackson or Lander would benefit those interested in participating, by reducing time and costs needed to be an active player in a public hearing.

[2] There is a unique set of uses within the Teton Conservation District, which are primarily recreational (front country and backcountry), with only a small amount of public lands grazing. Due to this unique set of uses, it is widely felt that this statewide approach affects our District differently than most in the state. As a result, we feel that it is particularly important that the concerns of our constituents are heard by WDEQ and the Environmental Protection Agency. The local economy here is utterly dependent on recreation, but recreation also constitutes a primary source of aquatic degradation. The ability to express our District's unique set of uses and issues would be greatly enhanced through a more local public hearing on this topic.

[3] The news media has been a primary source of information about the Categorical Use Attainability Analysis in our District. We feel that having a local meeting will provide a much needed opportunity for the WDEQ to explain and represent the actual intentions and expected outcomes of this action.

Thank you for providing our District with the opportunity to provide input on WDEQ stream use classification. Our District is often an outlier when it comes to Wyoming's general consensus; however, we do feel that recreation in Northwest Wyoming is widely recognized for its contribution to Wyoming's lifestyle and revenue stream, and needs to be protected. Please consider providing better opportunity for citizens in this part of the state to share their opinions on this ruling, but also provide them with much needed information about this process and the resulting implications. If the Teton Conservation District can offer support to WDEQ for the establishment of a public hearing within our District, please let us know.

Department Response: See Public Process Summary Response. Also see Recreational Designated Uses and Water Quality Criteria Summary Response, Changes in Water Quality/Protection of Downstream Waters Summary Response, and Maintaining Water Quality Summary Response.

Teton County Commissioners: We appreciate the ability for the public to provide comment during the hearing you are holding in Casper on September 16th. However, in the interest of residents in Northwest Wyoming, we respectfully request that an additional public hearing be provided on the Western side of the state. We feel that one additional hearing in either Jackson or a nearby community would greatly improve the ability for our residents to attend and participate. There are three specific reasons why we feel this request is justified.

There is a unique set of uses within Teton County, which are primarily recreational (front country and backcountry), with only a small amount of public lands grazing. Due to this unique set of uses, it is widely felt that this statewide approach affects our community differently than other areas of the state. As a result, we feel that it is particularly important that the concerns of our residents are heard by the WDEQ and the Environmental Protection Agency. The local economy here is utterly dependent on recreation, but recreation also constitutes a primary source of aquatic degradation. The ability to

express our area's unique set of uses and issues would be greatly enhanced through a more local public hearing on this topic.

The news media has been a primary source of information about the Categorical Use Attainability Analysis in our community. As a result, our residents have not had a particularly well rounded description of the methods used, and corresponding implications of this ruling. We feel that having a local meeting will provide a much needed opportunity for the WDEQ to explain and represent the actual intentions and expected outcomes of this action.

Thank you for providing us and the public the opportunity to provide input on WDEQ stream use classification. Our District is often an outlier when it comes to Wyoming's general consensus; however, we do feel that recreation in Northwest Wyoming is widely recognized for its contribution to Wyoming's lifestyle and revenue stream, and needs to be protected. Please consider providing a better opportunity for citizens in this part of the state to share their opinions on this ruling, but also provide them with much needed information about this process and the resulting implications. Please let us know if we can support WDEQ in establish a public hearing on the Northwestern area of the state.

Department Response: See Public Process Summary Response. Also see Recreational Designated Uses and Water Quality Criteria Summary Response, Changes in Water Quality/Protection of Downstream Waters Summary Response, and Maintaining Water Quality Summary Response.

Kevin Proescholdt, Conservation Director, Wilderness Watch: On behalf of Wilderness Watch, I would like to request that a public hearing be held in Jackson, Wyoming, to accept public comment on the DEQ's Categorical Use Attainability Analysis for Recreation.

Based on recent news coverage, we understand that the DEQ has scheduled a public hearing in Casper on September 16th to accept public comment on the decision. I live and work in Minneapolis, Minnesota, and it is not feasible for me to attend the meeting in Casper. But one of our national board members lives in Jackson, and he could represent our interests at a public hearing there.

In addition to holding a public hearing in Jackson, we request a 60-day extension of time for the public to submit written comments on the proposal. The proposal, and the issues it addresses, are difficult and complex and deserve a thorough review.

Department Response: See Public Process Summary Response.

Amber Wilson, Environmental Quality Advocate, Wyoming Outdoor Council: On behalf of the Wyoming Outdoor Council, I would like to request that a public hearing on the DEQ's decision to reclassify 76.1 percent of the state's surface waters from primary contact recreation to secondary contact recreation be held in Lander, Wyoming.

As you know, Lander is home not only to the National Outdoor Leadership School, but also hundreds of outdoor enthusiasts unaffiliated with NOLS who regularly engage in a multitude of outdoor recreation pursuits that often take them deep into Wyoming's backcountry areas. Based on recent press coverage, many of these folks are just now coming up to speed on the implications of the DEQ's August 20, 2014 decision to reclassify 87,775 stream miles to secondary contact recreation.

Although staff members from the Wyoming Outdoor Council anticipate attending the public hearing in Casper on Wednesday, September 16th, many of our members and members of the general public are

understandably unable to do so. The opportunity to provide comments by mail and fax will satisfy some members of the public but for many others the opportunity to present live testimony and engage DEQ staff in person is very important.

In addition to the hearing in Lander, we respectfully request a 60-day extension for the public to submit written comments on the UAA. This would ensure that the public has a meaningful opportunity to participate.

Department Response: See Public Process Summary Response.

Armond Acri, Jackson, WY: I would like to thank you for allowing public comment by fax or mail on the proposed changes in water quality standards for Wyoming Streams. I hope in the future you will allow comments to be made by email. Even WYDOT has moved into the 21st century and allows email comments.

Department Response: See Public Process Summary Response.

Rob Davidson, Council for the Bighorn Range: Good public policy comes from a wider segment of stakeholders than the DEQ apparently designed this decision around.

Department Response: See Public Process Summary Response.

Lisa McGee, Jackson, WY: To begin with, the DEQ should withdraw its August 2014 decision. Short of this, what guarantee does the public have that the information it provides in comments will be even considered? The decision (as DEQ has stated repeatedly) has already been made. Withdrawing the decision does not mean aspects of the analysis completed to date can't be retained, but rather it ensure that the process is fair and inclusive of all new comments.

I understand there were two comment opportunities years ago, but almost no one knew this process was happening. When I tell friends and neighbors about this decision, they are astounded. "Why," they ask, "would DEQ want to do this? And why are we just hearing about this now?" By allowing the process to be reinitiated and allowing public input on the framework of the decision and the model the DEQ implements would make huge strides in regaining the public's trust. This approach would also help ensure most of Wyoming's streams are accurately classified.

The kind of outreach that DEQ should have done with recreational groups (river users, outdoor leadership schools, dude ranches, boaters, anglers, day camps, science schools, e.g.), as well as conservation groups focused on wilderness, rivers and public lands, and the general public, would have undoubtedly resulted in this glaring error being caught and remedied.

I would suggest that the DEQ seek widespread public comment – in meetings around the state comprised of diverse stakeholders – on the general categories of waters in the state that might reasonably be reclassified. This would ensure meaningful public participation.

I am confident that, with robust public participation and transparency – something that is only beginning to happen and could still benefit from improvement – the DEQ will arrive at a more appropriate classification system. Thank you for considering my comments. Please add me to any future mailing lists about this issue. I would like to be updated as this process evolves.

Department Response: See Public Process Summary Response.

Gary Cukjati, Director, National Outdoor Leadership School : NOLS and partners wrote an August 15 letter to WDEQ Director Todd Parfitt requesting an additional public hearing in Lander, additional time for public comment, and the ability to submit written comments by email. WDEQ decided to accept written comment by post prior to the September hearing, or in person at the meeting, but our other requests were denied. We believe that WDEQ can and should do more to ensure adequate public knowledge and engagement for a rule with statewide impacts. For example, the opportunity to submit comments electronically via email is standard practice to ensure ease of access and participation for an equitable public process. Given the great extent of this study's effect on Wyoming waterways, and the likelihood that this categorical, state-wide UAA is the first of its kind in the nation, additional public review and participation is critical to ensure a robust and well-considered rule.

Public outreach, education, and engagement have been insufficient. WDEQ may have achieved the minimum public outreach standards defined by Wyoming law, but a rule with such broad impacts should be broadly known and understood by the people of Wyoming before it is implemented. Outreach efforts should include regional public meetings that provide an overview of the impacts and opportunity for public discourse and comment. Municipalities near large wilderness and mountain areas, like Lander, are disproportionately affected by these stream downgrades and should have their own hearings. As we pointed out previously (see Attachment A), US EPA Region 8 wrote in a September 25, 2013 comment letter to WDEQ on the Draft Categorical Use Attainability Analysis for Recreation,

"The EPA is particularly interested in seeing the public feedback on pools within the low flow streams addressed by the UAA that are used for or would support primary contact recreation. Our understanding is that WDEQ proposed primary and secondary use designations based on the best information available to the state, but feedback from people that live near the streams at issue is critical in making the right environmental decision."

In our estimation, it would be unreasonable to expect that sufficient public feedback will be obtained by the conclusion of the September 16 hearing to accurately gauge whether the thousands of pool-forming low flow streams have present or attainable primary contact recreation.

NOLS welcomes any opportunity to work with WDEQ to refine the Categorical UAA and increase public involvement.

Department Response: See Public Process Summary Response.

Paige Smith, Cheyenne, WY: I have the following questions/observations regarding the public outreach that was conducted prior to the Administrator making his determination:

1. I'm curious as to whether the Water Quality Division Administrator consulted with the advisory board prior to revising these standards as required by W.S. 35-11-302(b)(i)? I did not see a reference to this being brought before the Water and Waste Water Advisory Board in the records provided on your web page. Had this topic been included on an advisory board agenda, the requisite public notice and outreach accompanying an advisory board meeting would have most likely eliminated the issues regarding public notice I discuss below.

- a. As I understand it (as Identified in the press articles published lately and which I can't verify through information supplied on your web page), the Water Quality Division relied on a single notice for each of the two public meetings held and that each was published in the Casper Star Tribune in the legal notices section. If this is indeed correct, in my experience with the WDEQ, I would consider a single publication and placement in the legal notices section to insufficiently constitute a good faith effort to notify the public.
- b. I believe that may assertion of insufficient notice is exemplified by the huge amount of outcry you are now hearing from citizens residing across the state that engage in extensive backcountry hiking, biking, etc., and business entities that make their livelihood from provided recreational opportunities in the back country. If they had been notified, you would have heard from them early in the process. It's alarming to note that not a single group representing recreation interests was listed as a commenter during either public comment period. In addition, it's curious to note the absence of any environmental groups with the exception of Western Watersheds having commented on such a huge, overarching change to Wyoming's streams. Interesting that the list of commenters is dominated by numerous Conservation Districts and extractive industries. These entities do not represent recreation interests in Wyoming. It's surprising to me that the Water Quality Division didn't specifically seek out recreation/environmental groups in order to obtain the "needed assistance from the public to identify streams within Wyoming that are used for primary contact recreation that were not identified as primary in the draft UAA."
- c. Additionally, your original notice for the public meeting being held in Casper on September 16, 2015, indicated that comments could only be presented in person. I'm glad that you reversed that position and I can now submit a comment by mail. However, I would like to note that again, in my experience as a long-time WDEQ employee, I do not recall a Division ever limiting public comment to in-person comments only.

I would recommend that the Water Quality Division do all it can to now engage and be respectful of the recreation/environmental community by agreeing to conduct more hearings in specific parts of the state as is being requested by numerous groups and individuals.

Department Response: See Public Process Summary Response.

Jonathan Ratner, Director, Western Watersheds Project: DEQ's approach is insufficient to comply with the letter or intent of the CWA and as such should be rejected. We request the DEQ to rescind its CUAA.

Department Response: See Public Process Summary Response.

Dan Heilig, Wyoming Outdoor Council: On behalf of the Wyoming Outdoor Council, and the undersigned conservation, outdoor recreation, and other interested organizations and individuals, we are writing to voice our concerns about your August 20, 2014 decision to downgrade recreation-based water quality standards on 87,775 stream miles – approximately 76 percent of the state's surface waters – based on a Categorical Use Attainability Analysis for Recreation.

As we explained in our January 5, 2015 letter to EPA, we believe your August 20, 2014 decision to reclassify recreation use designations on 76 percent of Wyoming's surface waters is based on: 1) a scientifically flawed categorical use attainability analysis; 2) erroneous and incomplete information regarding existing and attainable primary contact recreation uses on so-called "low flow" surface

waters; and 3) an inadequate public outreach effort that failed to illicit a single comment from any recreational user group during the multi-year development of the UAA.

In addition to a flawed UAA, your decision fails to satisfy fundamental requirements of the Clean Water Act, the Wyoming Environmental Quality Act, and the Wyoming Administrative Procedures Act. For these and other reasons explained below, we respectfully request that you withdraw your August 20, 2014 decision and bring the process anew, with active engagement of the outdoor recreation and conservation communities as well as other interested stakeholders. In making this request, which we do not take lightly, we are not asking you to disregard the analyses undertaken to date. All of the information gathered by the DEQ and local conservation districts in connection with this process, including photographs, recorded observations and other information collected during site visits, may still be relevant and useful for any future UAA processes. But the public, particularly recreation user groups, should have been involved in the critical, initial development phases of the UAA, phases which led to major determinations regarding the type of UAA (categorical vs. site-specific), the geographic scope of the analysis area (statewide, basin, watershed, or individual segment), the types of stream considered “low flow”, exceptions to the downgrade based on access, and many other basic elements which were previously decided by the DEQ without the involvement of key stakeholders.

It is the inadequacy of this UAA and decision embodied in the three-step process that has brought about the need for this additional public hearing in order to ensure there is sufficient information from the recreational public to support the UAA decisions.

Threshold Issue #1: Holding a hearing on a “final” decision does not comply with Clean Water Act regulations governing public input into the development or revision of water quality standards.

In order for the public to have a “meaningful” opportunity to comment on and otherwise participate in the development of the UAA, the DEQ/WQD Administrator must withdraw his August 20, 2014 decision and provide the public with an opportunity to comment on a *proposed* decision and a *proposed* UAA. Aside from applicable legal requirements, common sense and principles of fairness demand nothing less.

In a letter dated June 3, 2015, which precipitated the need for this hearing, EPA Region 8 informed the DEQ that, “in order for the EPA to approve any of the recreation designated uses that are consistent with CWA requirements, the state must first hold a public hearing *consistent with CWA 303(c)(1) and the implementing regulations at 40 CFR Parts 25 and 131.*” (emphasis added). See EPA letter attached as Document Exhibit 1.

EPA reiterated the applicable Clean Water Act requirements in the last paragraph of its letter:

In summary, in order for the EPA to approve any of the recreation designated uses that are consistent with the CWA requirements, the state must first hold a public hearing, satisfy the requirements of 40 CFR Part 25, and submit the transcript from the public hearing, information and written comments submitted during the hearing and the state’s responses to written and oral comment to enable the EPA’s meaningful review of the state’s submission.

Id. The EPA also made it clear that feedback from people living near or recreating on these streams “is critical in *designating* the appropriate recreation use.” (emphasis added).

Although the Wyoming Outdoor Council appreciates the DEQ's decision to conduct a public hearing as requested by EPA in its June 3, 2015 letter, the hearing scheduled on September 16th in Casper to accept public comment on a *final decision* issued over a year ago does not satisfy the Clean Water Act's public hearing requirements. Under both 40 CFR 131.20 and 40 CFR 25.5, the public must be given an opportunity to comment at the hearing on a *proposed action* – not a *final decision* as is the case here.

The EPA's public participation regulations implementing the Clean Water Act require states to provide "meaningful" opportunities for public participation in revisions to water quality standards. An essential element of meaningful public participation is a public hearing on the agency's *proposed action*, which of course is intended to solicit public views *before* the agency's decision becomes final. Inviting the public to participate in a public hearing in a single location on a final decision that was made more than a year ago, as the DEQ is doing here, fails to satisfy the Clean Water Act's public participation requirements. It is also an affront to concerned citizens, some of whom must drive 10 hours or more (round trip) in order to attend. Many of our members are asking, "What's the point of sending in a letter or attending the hearing if the DEQ's decision has already been made?" Frankly, we wonder the same thing.

40 CFR 131.106 requires that: "*Prior to adding or removing any use, or establishing sub-categories of a use, the State shall provide notice and an opportunity for a public hearing under § 131.20(b) of this regulation.*" (emphasis added). In addition, 40 CFR 131.20(b) provides that: "the State shall hold a public hearing for the purpose of reviewing water quality standards... The *proposed* water quality standards revision and supporting analysis shall be made available to the public prior to the hearing." (emphasis added).

EPA's revised Water Quality Standards regulation, issued August 21, 2015, clarifies that the Clean Water Act's public hearing requirement applies "whenever revised WQS [water quality standards] regardless of whether the revision is a result of triennial review per § 131.20(a)." See EPA Water Quality Standards Regulatory Revisions, 80 Fed. Reg. 51020, 51042 (August 21, 2015).

In addition to the Section 131 requirements, EPA's Part 25 requirement governing public hearings provides, in part, that: "Any non-adjudicatory public hearing, whether mandatory or discretionary, under the three Acts shall meet the following minimum requirements."

A notice of each hearing shall be well publicized, and shall be *mailed* to the appropriate portions of the list of interested and affected parties required by § 25.4(b)(5)... The notice shall identify the matters to be discussed at the hearing and shall include or be accompanied by a discussion of the agency's *tentative determination* on major issues... 40 CFR 25.5(b) (emphasis added).

The agency holding the hearing shall inform the audience of the issues involved in the decision *to be made*, the considerations the agency will take into account, the agency's *tentative determinations* (if any), and the information which is particularly solicited from the public. 40 CFR 25.5(e) (emphasis added).

Taken together, these requirements make clear that a public hearing must be held on a *proposed* revision to water quality standards, and the hearing must provide a meaningful opportunity for the public to express views on tentative determinations on major issues. Yet in this instance, the DEQ's notice of public hearing provides that the DEQ will accept comments "regarding its *designation* of Wyoming streams for secondary contact recreation as described in its *final* Categorical Use

Attainability Analysis for Recreation.” (emphasis added). Obviously, the goal of meaningful public participation cannot be achieved in circumstances where the DEQ has invited comment on a final decision.

As these requirements make clear, in order to achieve the public participation objectives outlined in the Clean Water Act and its implementing regulations, the public hearing scheduled for September 16, 2015 in Casper must be held on a “proposed” water quality standard and the “agency’s *tentative determination on major issues...*” must be made available in the notice of hearing. Here, neither requirement is met.

The DEQ’s August 20, 2014 decision is final, and all of the determination on major issues have been made. These major determinations include: 1) in an action without precedent anywhere in the nation, developing a categorical UAA covering the entire state instead of a watershed by watershed approach, or based on stream type; 2) using a novel GIS-based approach instead of a process based on specific stream information; 3) choosing to use 6 cfs as the threshold for reclassification; and 4) major assumptions about recreation use and walking distances, etc. SO despite the fact that the CWA regulations require that a hearing must be held to consider *tentative determinations on major issues*, and on *proposed* water quality standards revisions, the DEQ specifically is not inviting comment on those fundamental issues.

Instead, the public has been “invited to provide oral and written comments and/or documentation regarding the existing and potential recreation activities on streams designated for secondary contact recreation as described in the Categorical UAA.” See DEQ Notice of Hearing, attached as Document Exhibit 2. To be clear, the DEQ has invited the public to comment on “streams designated for secondary contact recreation...” Not *proposed* for designation as secondary contact, but rather, *designated* for secondary contact.

Because DEQ insists and apparently believes its decision is final (minus a perfunctory public hearing being held under protest), it is now requesting the public to come forward with detailed information and evidence demonstrating existing or attainable primary recreation use on specific stream segments. In essence the DEQ is requiring the public to produce UAAs showing that primary contact recreation is attainable despite the fact that the CWA places the burden on the agency to demonstrate that those uses are not attainable. We categorically reject this approach.

As discussed by the EPA in its June 3, 2015 letter to the Wyoming DEQ calling for this hearing, the purpose of the hearing is to reach out to recreational user groups and get their feedback, which is “critical in designating the appropriate recreation use.” Moreover, the EPA made it clear the burden of proof to sustain any decision to downgrade recreational use designations lies with the state, and that burden has not been met to date as shown by the need for this additional hearing. Thus, the DEQ must fully consider the information received at this hearing before reaching any final decision on recreation use categories, and on all other tentative major determinations regarding this UAA. It can only do so adequately and objectively if it withdraws its August 2014 decision.

Department Response: See Public Process Summary Response. Also See Approach For Identifying Waters for Secondary Contact Summary Response.

Dan Heilig, Wyoming Outdoor Council: *Threshold Issue #2: The revision of water quality standards by the Administrator does not satisfy the requirements of the Wyoming Environmental Quality Act.*

Wyoming Statute § 35-11-302 provides, in part,

- (a) The Administrator, after receiving public comment and after consultation with the advisory board, shall recommend to the director rules, regulations, standards and permit systems to promote the purpose of this act. Such rules, regulations, standards and permit systems shall prescribe:
 - i. Water quality standards specifying the maximum short-term and long-term concentrations of pollution, the minimum permissible concentrations of dissolved oxygen and other matter, and the permissible temperatures of the waters of the state. *Id.*

Contrary to the plain language of § 35-11-302(a), which requires that “standards” be recommended to the Director after receiving public comment and consultation with the advisory board, Section 34 of Chapter 1, Water Quality Rules and Regulations authorizes the Administrator to submit changed water classifications or use designations directly to EPA for review, bypassing both the advisory council and the director, and avoiding a non-adjudicatory rulemaking hearing in front of the Environmental Quality Council. That is precisely what the Administrator did here. But the attenuated process outlined in Chapter 1, Section 4, and utilized by the Administrator, directly conflicts with W.S. § 35-11-302(a) which requires the involvement of the Advisory Board and the Director and a non-adjudicatory hearing before the EQC as part of the development (or revision) of a water quality standard.

Even if, for purposes of discussion, Section 34 comports with § 35-11-302(a) (we believe it does not), the manner in which it was utilized here violates the terms and conditions the EPA placed on its use during the WQS approval process. In a letter dated January 25, 2002, the EPA outlined its concerns about the new process proposed by DEQ:

Section 34, Use Attainability Analysis.

Section 34 establishes a new process for making determinations regarding use classification changes or site-specific water quality criteria adjustments based on the use attainability provision in Section 33. For use classification changes, Section 34(a) allows the Department to administratively amend use classifications in Wyoming’s Water Quality Standards and do so outside the Council’s formal rulemaking process. In comments made during the standards development process, the Region expressed concern with Section 34(a) as initially proposed. Specifically, in a May 31, 2001 letter to the Water Quality Division, the Region explained its concern and noted that the new process could be acceptable to EPA if it were *demonstrated to be functionally equivalent to the current process* and results in enforceable provisions identified as State Water Quality Standards.

In the Region’s May 31, 2001 letter to the Division, we set out our understanding of how the revised Section 34(a) would be implemented. It was then, and continues to be, our understanding that implementation of Section 34(a) would include the following elements [nine bulleted items]:

- Implementation of the process will involve the public, with *participation requirements equivalent to those applied in rulemaking*.

In a letter dated June 8, 2001 from Gary Beach, Administrator for the Water Quality Division, the Division confirmed that the Region’s understanding of Section 34(a)... and its intended implementation was correct.

Based on this understanding, EPA has determined that the revision to Chapter 1, Section 34, are consistent with EPA's water quality standards regulation at 40 CFR Part 131. Accordingly, EPA approves Section 34, Use Attainability Analysis subject to ESA consultation.

See EPA letter to Wendy Hutchinson, Chairperson, Wyoming Environmental Quality Council, dated January 25, 2002, Rationale for EPA's Action on the Revision to Wyoming's Water Quality Standards, Enclosure at 7,8, attached as Document Exhibit 4.

It is clear that DEQ did not involve the public in the development of its UAA "with participation requirements equivalent to those applied in rulemaking." Among other things, there was absolutely no discussion or debate within the advisory board (a body composed of citizens) and no discussion or debate with the Environmental Quality Council (also a citizen board) or within any other representative body or forum that can be considered to be the functional equivalent. The opportunity to appeal the Administrator's decision to the EQC in a trial-type proceeding conducted under the Rules and Civil Procedure with sworn witnesses and the State's AG defending the Administrator's decision is not the functional equivalent of a non-adversarial hearing held on rulemaking. And as discussed in further detail below, the level of opportunities for public participation in the context of Wyoming APA notice and comment rulemaking far surpasses the limited opportunities provided by the DEQ in this instance. Those additional comments include mailed notices of public hearings, and the opportunity for public citizens to request – and be granted – public hearings when 25 or more citizens, or an association with at least 25 members, make such a request. Wyoming APA rulemaking requirements are addressed in the following section.

It is apparent the DEQ has not complied with these statutory requirements due to its use of the attenuated process allowed by Chapter 1, Section 34 of the Wyoming Water Quality Rules and Regulations (WQRR), and in addition, has not provided public participation opportunities that are the functional equivalent of those provided in rulemaking.

Department Response: See Public Process Summary Response.

Dan Heilig, Wyoming Outdoor Council: *Threshold Issue #3: The Wyoming Administrative Procedure Act requires the DEQ to hold a hearing on a proposed UAA and on a proposed reclassification decision.*

The development or revision of a water quality standard, including the removal of a designated use (i.e., primary contact recreation), constitutes a rule under the Wyoming Administrative Procedure Act (APA). "Rule" is defined in W.S. § 16-3-101(b)(ix) and "means each agency statement of general applicability that implements, interprets and prescribes law, policy or ordinances of cities and towns, or describes the organization, procedures, or practice requirements of any agency. The term includes the amendment or repeal of a prior rule..."

The "streamlined" approach used by the Administrator pursuant to Chapter 1, Section 34, of the DEQ's WQRR to develop the UAA and issue his final determination improperly bypasses the required Wyoming APA notice and comment rulemaking process, including the public notice requirement at W.S. §16-3-103(a)(i) (notice of proposed rule must be mailed with at least 45 days' notice). A proposed rule must also state whether the proposed rule "meets minimum substantive state statutory requirements." *Id.* § 16-3-103(a)(i)(G). All interested persons must be given an opportunity to submit data, views, and arguments orally or in writing on the proposed rule. *Id.* § 16-3-103(a)(ii). And the agency "shall consider fully all written and oral submissions respecting the *proposed* rule." *Id.* § 16-3-103(ii)(B) (emphasis added).

And “[i]n the case of substantive rules, opportunity for oral hearing shall be granted if requested by twenty-five (25) persons, or by a governmental subdivision, or by an association having not less than twenty-five (25) members.” W.S. § 16-3-103(a)(ii)(A). We understand that the DEQ has received requests for hearings in Laramie, Lander, Cody and Jackson which were submitted by governmental subdivisions, by associations with more than 25 members, and by individual citizens in numbers far greater than the minimum and that all of those requests for additional hearings have been denied.

As explained above, the DEQ has not provided the public with an opportunity that meets the requirements and the Wyoming APA to participate in the development of a *proposed* rule, and the hearing schedule for September 16th in Casper to receive public comment on the DEQ/WQD’s *final* Categorical UAA for Recreation does not meet the basic requirements.

By law, the DEQ must ensure full compliance with the Wyoming APA requirements for rulemaking as part of this UAA reclassification process. As discussed in the prior section, the DEQ has not done this because it used the attenuated process set forth in Section 34 of the DEQ’s Water Quality Rules and Regulations. This shortcoming must be corrected before the UAA is finalized.

In light of the EPA’s view that a purpose of this hearing is to make decisions about “designating” recreational uses, the DEQ must withdraw its UAA decision. This decision was reached before full notice and comment opportunities were afforded to the public, as demonstrated by the requirement to hold this additional hearing in order to get full public input and participation.

Clearly the DEQ’s designated use decisions cannot stand and there is no doubt that the initial findings will have to be modified based on the results of this hearing. We ask the DEQ to acknowledge this reality and withdraw the August 20, 2014 decision. Its rulemaking is not complete and it should not be treated as such. Further rulemaking activity is required and this requirement should be recognized by DEQ.

On a related note, the DEQ suggest in its June 17, 2015 letter to EPA that “modifications to the UAA” could be submitted to EPA as a result of public comments made at the hearing. But the DEQ letter does not indicate the process it will follow in the event modifications are made. In consideration of the issues discussed above, we believe that any modification to the UAA would also require the issuance of a new decision. However, because of the vague wording of the existing decision – it lacks any information about the specific elements of the UAA and it adopts an *undated* Categorical UAA – it is conceivable that the DEQ – in a misguided effort to expedite the process, could modify the UAA and choose not to issue a new decision. If the DEQ were to proceed in this manner, entities seeking administrative review before the Environmental Quality Council would potentially be deprived of their legally mandated appeal rights because the 60 day period for filing appeals the EQC has long since passed. In sum, any modifications to the UAA would ultimately necessitate the issuance of a new decision with full rights to administrative review available to potentially affected parties.

Department Response: See Public Process Summary Response. Also See Approach for Identifying Waters for Secondary Contact Summary Response. As indicated by the comments received, neither the fact that WDEQ did not withdraw the August 20, 2014 decision, nor the wording of the public notice hindered any comments regarding the approach for designating waters for secondary contact recreation.

Dan Heilig, Wyoming Outdoor Council: *The DEQ may not remove existing and attainable recreational uses of the State's surface waters based on the absence of public comment when no effort was made to encourage comments from recreational users.*

One of the basic requirements of the Clean Water Act is that states may not remove designated uses if they are existing uses. See 40 CFR § 131.10(h). Moreover, states may remove a designated use which is not an existing use “only if the State can demonstrate that attaining the demonstrated use is not feasible...” 40 CFR § 131.10(g). Despite these core requirements, the DEQ concluded that since “public feedback has not indicated that the stream is used for primary contact recreation, primary contact recreation is presumed not to be an existing or attainable use and can be removed.” UAA at 7.

As we will describe in detail below, given the nature of the DEQ's flawed public participation process, this result was a foregone conclusion. Although the water quality standard downgraded by DEQ is a recreation-based standard, no recreation user groups were consulted at any time during the multi-year process. Based on information available on the DEQ's website, it appears the state's public outreach and consultation efforts were focused almost exclusively on individuals and organizations who either actively advocated for or supported the downgrade of the state's water quality standards.

Section 101 of the Clean Water Act provides, in part, that “public participation in the development, revision, and enforcement of any regulation, standard, effluent limitation, plan, or program established by the Administrator or any State under this chapter shall be provided for, *encouraged*, and assisted by the Administrator and the States.” 33 U.S.C. § 1251(e) (emphasis added). There is no evidence anywhere in the documents available on DEQ's website that DEQ “encouraged” the participation of any potentially interested stakeholder except some conservation districts and their constituents, which is to say, the proponents of the state-wide downgrade.

EPA's public participation requirements applicable to the DEQ's Categorical UAA are set forth in 40 CFR § 131.10(3); 40 CFR § 131.20(b); and 40 CFR Part 25. Under these rules, the State must provide notice and opportunity for a public hearing “under § 131.20(b)” before removing any use. 40 CFR § 131.10(e). In addition, 40 CFR § 131.20(b) requires that the state's public outreach efforts satisfy the public participation requirements of Part 25. In turn, Part 25 “sets forth *minimum requirements* and suggested program elements for public participation in activities under the Clean Water Act...” 40 CFR § 25.1 (emphasis added).

Some of the key public participation requirements contained in Part 25 that the DEQ failed to implement are listed below:

Agencies “shall provide for, encourage, and assist the participation of the public.” 40 CFR § 25.3(a).

“Public participation is that part of the decision-making process through which responsible officials become aware of public attitudes by providing ample opportunities for interested and affected parties to communicate their views.” 40 CFR § 25.3(b).

Agencies shall “use all feasible means to create opportunities for public participation, and to stimulate and support participation.” 40 CFR § 25.3(c)(7).

“Providing information to the public is a necessary prerequisite to meaningful, active public involvement. Agencies shall design informational activities to encourage and facilitate the public's

participation in all significant decisions covered by § 25.2(a), particularly where alternative courses of action are proposed.” 40 CFR § 25.4(b)(1).

“Each agency shall identify segments of the public likely to be affected by agency decisions and should consider targeting informational materials towards them (in addition to the material directed toward the general public).” 40 CFR § 25.4(b)(2).

“Each agency shall develop and maintain a list of persons and organizations who have expressed an interest in or may, by the nature of their purposes, activities or members, be affected by or have an interest in any covered activity. ***Those on the list... shall receive timely and periodic notification of the availability of materials under § 25.4(b)(5).”

Agencies “shall provide for early and continuing public consultation in any significant action covered by this part.” 40 CFR § 25.4(d).

“A notice of each hearing shall be well publicized, and shall also be *mailed* to the appropriate portions of the list interested and affected parties required by § 25.4(b)(5).” 40 CFR § 25.5(b) (emphasis added).

Procedures for the conduct of hearings “shall not unduly inhibit free expression of views (for example, by onerous written statement requirements or qualification of witnesses beyond minimum identification).” 40 CFR § 25.5(e).

“The requirements of § 25.5 (b) and (c) area applicable to public meetings...” 40 CFR § 25.6.

As described in the UAA’s Response to Comments (dated January 28, 2013 and August 2014), and reiterated in the DEQ’s December 1, 2014 letter to the Wyoming Outdoor Council, efforts taken by DEQ to notify the general public during the nearly two-year process leading up to the decision consisted entirely of the following:

- Email notice to the DEQ’s unreliable list-serve announcing the August 2013 and January 2014 comment opportunities.
- Legal notice in the Casper Star Tribune published once in 2013 and once in 2014.
- Numerous meetings with Wyoming conservation districts.
- News article in the Pinedale Roundup.
- Two news articles in the Livestock Roundup.
- Notice on Water Quality Division webpage.
- Public meeting in Cheyenne, WY.
- Wyoming Public Radio interview with Lindsay Patterson, DEQ/WQD spokesperson on February 5, 2014.

These limited actions to engage the general public, described in greater detail below, fail to meet the minimum public participation requirements set forth in Part 25.

Notice to list-serve. Notice of the two comment opportunities and the public meeting in Cheyenne was not provided to any party via U.S. Mail, but rather by electronic “email” notice transmitted by a DEQ/WQD list-serve to entities that requested notice. Based on our experiences, the DEQ’s list-serve is unreliable and ineffective at meeting the requirements of Part 25. Despite attempts to sign on the list-serve, and despite our longstanding interest in water quality standards, electronic notice was not transmitted to the Wyoming Outdoor Council, nor to any of the organization which endorsed the

October 10, 2014 letter to DEQ, nor to any other identifiable recreational user group. A DEQ official stated that technical difficulties with the Water Quality Division's list-serve may have been responsible for the Wyoming Outdoor Council's inability to sign on, and for certain entities listed on the list-serve, such as Environmental Defense Fund, not receiving notice.

Legal notice. Notice was published in the Casper Star-Tribune's classified pages a single time in 2013 and a single time in 2014.

Meeting with conservation districts. The DEQ participated in an ongoing and extensive collaborative process with some of Wyoming's conservation districts, but neglected to extend the same opportunities to conservation organizations and recreational users of Wyoming's surface waters.

News story in the Pinedale Roundup. With a population of approximately 2,000, Pinedale is one of Wyoming's smallest towns, and Sublette County ranks 16th in population of Wyoming's twenty-three counties.

Two news stories in the Livestock Roundup. The Livestock Roundup is a trade publication for the livestock industry. A story in this publication would be unlikely to reach college outdoor programs, summer camps, mountaineering clubs, outdoor leadership schools, mountain bikers, anglers, backpackers, trail runners or other outdoor enthusiasts or the general public.

Website notice. Notice on the DEQ website was embedded several clicks within the Water Quality Division section and was not highlighted in any way on the DEQ's or WQD's main webpages, where other important agency information is displayed. See Document Exhibit 5 (main DEQ webpage) and Document Exhibit 6 (main Water Quality Division webpage). The Wyoming Outdoor Council routinely receives notice by U.S. Mail from other divisions of the DEQ for actions and proposals that are much more limited in scope, and has come to rely on such notices. See Document Exhibits 7 & 8 (landfill notices). In addition, in what appears to be contrary to the requirements of Part 25, the Water Quality Division has informed the public that it will no longer provide notice by mail. See Document Exhibit 5 (notice on DEQ/WQD website).

Public meeting. Notice of the public meeting in Cheyenne held on August 26, 2013 was not distributed by U.S. Mail, but rather was published a single time in the Casper Star-Tribune, in the same notice that announced the comment opportunity.

Wyoming Public Radio. The radio interview with DEQ spokesperson Lindsay Patterson was less than a minute long and aired on a single day in February. According to the transcript of the interview obtained from Wyoming Public Media website, Ms. Patterson is quoted as saying: "What we're really talking about is dry draws in the state. We're talking about ephemeral water bodies, intermittent water bodies that have no water." See Document Exhibit 9. She went on to state that, "imposing the highest environmental standards on water that people don't touch is unnecessary regulation." *Id.* Arguably, this kind of "notice" is far worse than no notice at all, because its effect is to reassure the public that the action proposed by DEQ is limited to ephemeral and intermittent streams with no water and no recreation use. When a public official confidently reassures the listeners of a state-wide radio broadcast that there is nothing to worry about, it is reasonable to assume that most listeners will take that statement at face value and quickly turn their attention elsewhere.

Hearing. A non-adjudicatory was not held, nor was one offered. The notice announcing the decision to downgrade the state's surface waters indicated the decision was a *final action* "which may be

appealed to the Wyoming Environmental Quality Council [internal citations omitted].” The only hearing offered by the DEQ was a post-decision adjudicatory hearing conducted in accordance with the Wyoming Rules of Civil Procedure. Such a trial-like adversarial hearing that pits ordinary citizens against a state agency defending its decision is hardly a setting that encourages public participation and a free and open exchange of viewpoints. Notice of the August 20, 2014 decision was not provided to the Wyoming Outdoor Council nor to any of the organizations that endorsed the Council’s October 10th letter to DEQ.

The result of this flawed and fundamentally unfair public participation process was predictable: “WDEQ/WQD did not receive any comments indicating that there are pools or other deep water areas on ‘low flow’ streams that are used for primary contact recreation.” UAA at 3. Had the DEQ *encouraged* the participation of recreational users and environmental interest, as required by Section 101(e) of the Clean Water Act and by EPA’s public participation regulations, the results of the UAA would have undoubtedly been very different. For example, DEQ would have learned that primary contact recreation uses routinely occur on low flow streams throughout the state, particularly on public lands managed by the Forest Service and Bureau of Land Management. DEQ would also have learned that many streams identified as “low flow” actually contain flows well in excess of 6 cfs during the summer months, as illustrated by Photo Exhibit 2. And DEQ would have learned that streams with flows less than 6 cfs located more than a mile from schools and towns are frequently used for primary contact recreation, quite often by young children.

The lack of attention to the public participation process is even more troubling given the EPA’s continuous emphasis on the importance of engaging knowledgeable citizens and recreational users:

Public review of the revised UAA and the proposed use designations for individual water bodies will be critical. We urge WDEQ to reach out to recreational user groups as part of the public process to identify any areas where the model may be underestimating flows or missing isolated pools that may support primary contact recreation.

Letter from EPA Region 8 to Lindsay Patterson, DEQ/WQD, dated January 22, 2013.

And again:

EPA is particularly interested in seeing the public feedback on pools within the low flow streams addressed by the UAA that are used for or would support primary contact recreation. Our understanding is that WDEQ proposed primary and secondary use designations based on the best information available to the state, but feedback from people that live near the streams at issue is critical in making the right environmental decisions.

Letter from EPA Region 8 to Lindsay Patterson, DEQ/WQD, dated September 25, 2013.

Even earlier, the EPA wrote:

The approach utilized by Wyoming did not consider site-specific information that can be vital in determining the potential for recreation uses to occur, such as water flows and depths, location of the waterbody and its proximity to residences, presence of features which facilitate and encourage recreation uses (e.g., trails and parks), substrate composition, and water quality conditions. Even more importantly, the Wyoming Approach did not consider site-specific information regarding existing

recreation uses, including information that can be readily obtained from knowledgeable individuals living in the area.

Letter from EPA Region 8 to Mr. Dennis M. Boal, Chair, Wyoming EQC, dated September 29, 2008, disapproving revisions to Wyoming's surface water standards pertaining to recreational use.

By failing to encourage participation from myriad recreational users, diverse environmental and sportsmen's organization, and other knowledgeable individuals in the UAA process, the DEQ failed to utilize the best information available about recreation uses of the State's surface waters. Organizations such as NOLS possess a vast wealth of information about recreational uses of the state's public lands and surface waters. Other groups that could have provided useful information include hunting organization such as Backcountry Hunters and Anglers; commercial users such as professional guides and outfitters; college outdoor program offered by Central Wyoming College and Wyoming Catholic College; schools and research institutions such as Teton Science School; summer camps and outdoor programs such as Elk Creek Ranch Camp, Teton Valley Ranch Camp, and Wilderness Ventures; guest ranches, and various scouting organizations. Non-commercial recreational users such as hikers and backpackers, trail runners, mountain bikers and climbers and mountaineers could have provided DEQ with additional information about existing and attainable uses of so-called "low flow" streams throughout Wyoming. Unfortunately this outreach did not take place, and the result is thousands of streams miles where primary contact recreation is an existing or attainable use have been improperly downgraded to secondary contact.

In conclusion, for the reasons stated above, we request that the DEQ/WQD withdraw its Categorical UAA for Recreation and August 20, 2014 decision. The geographic scope of the analysis is much too broad, the number of stream miles affected much too extensive and the characteristics of stream segments much too varied to be susceptible to a generic use attainability analysis. Wyoming DEQ's consideration of the "suite of factors," which included inaccurate and incomplete information about stream flows and the presence of pools and other deep water areas; incorrect assumption about recreation uses and access; and a woefully deficient public participation process, fail to satisfy minimum legal and scientific standards required by the Clean Water Act. We therefore ask DEQ to withdraw its Categorical UAA and reclassification decision.

We would appreciate a timely response to this letter and an opportunity to be involved in any further meetings, discussions or deliberation regarding this or any process related to the development or revision of Wyoming Water Quality Standards.

Department Response: See Public Process Summary Response. Also see Approach for Identifying Waters for Secondary Contact, Changes in Water Quality/Protection of Downstream Waters, and Maintaining Water Quality Summary Responses.

Residents of Laramie, WY: We, the undersigned, are individuals who live in or around Laramie, Wyoming. We recently learned about the WDEQ's notice announcing that a public hearing will be held Wednesday, September 16 in Casper, WY to allow citizens an opportunity to provide input regarding low-flow streams, which support primary contact recreation. While we are eager to participate, many of us are employed full-time and it is unreasonable, both from a time and personal standpoint, for us to attend a meeting held at a location two-and-a-half hours away on a weeknight. We write to request that an additional hearing be held in Laramie in order to provide a more reasonable opportunity for participating in this public process.

Department Response: See Public Process Summary Response.

Residents of Park County, WY: We, the undersigned businesses and resident of Park County, Wyoming, submit this request for a hearing in Cody, Wyoming, to accept public comment on the DEQ's August 20, 2014, decision to downgrade water quality standards for recreation on over 75% of the state's small streams, approximately 87,775 stream miles. The agency's decision allows concentrations of harmful *E. coli* bacteria to increase 5 times the level that is declared safe by EPA for swimming and other "primary contact recreation" uses, such as bathing, kayaking and tubing.

The DEQ has scheduled a public hearing in Casper on September 16 to accept public comment on that decision. Although we applaud the DEQ's decision to hold a hearing in Casper, the time and expense of traveling to Casper for many Park County resident makes it difficult to participate in this process.

Many of the downgraded streams are located in areas used by local residents and visitors alike, including public lands managed by the Shoshone National Forest and the Bureau of Land Management. We have not had sufficient time or opportunity to review or comment on the decision, and therefore request the opportunity to do so.

Department Response: See Public Process Summary Response. Also see Changes in Water Quality/Protection of Downstream Waters Summary Response. Also see Recreational Designated Uses and Water Quality Criteria Summary Response.

Residents of Teton County, WY: We, the undersigned businesses and residents of Teton County, Wyoming, submit this request for a public hearing in Jackson, WY, to accept public comment on the DEQ's three-quarters (76.1%) of the State's small streams, encompassing approximately 87,775 stream miles. The agency's decision allows concentrations of harmful *E. coli* bacteria to increase 5 times the level that is declared safe by EPA for swimming and other "primary contact recreation" uses, such as bathing, kayaking and tubing.

The DEQ has scheduled a single public hearing in Casper on September 16th to accept public comment on the decision. Although we appreciate the DEQ's decision to hold a public hearing in Casper, the time, inconvenience and expense of traveling to Casper for many Teton County residents makes it difficult to participate in this process.

Many of the downgraded streams are located in areas used by local residents and visitors alike, including Congressionally-designate Wilderness Areas managed by the U.S. Forest Service. We have not had sufficient time or opportunity to review or comment on the decision, or to understand its implications and therefore request the opportunity to do so.

Department Response: See Public Process Summary Response. Also see Changes in Water Quality/Protection of Downstream Waters, Recreational Designated Uses and Water Quality Criteria, Class 1 Waters, and Maintaining Water Quality Summary Responses.

Don McDowell, Lingle-Fort Laramie Conservation District: This study was discussed openly in our board for two meetings prior to our actually going out to do it, and it was discussed again after we completed the surveys and submitted our findings, and as our meetings, our branch of government, they're open to the public, and the public had more than ample opportunity to offer comments.

Department Response: See Public Process Summary Response.

Bobbie Frank, Wyoming Association of Conservation Districts: We do feel DEQ's done an adequate and if not extensive job of notice and outreach on this categorical UAA.

We also do believe that it's appropriate to retain the ability to submit site-specific UAAs, which is retained in Chapter 1 water quality rules in the instance that there's disagreement with the final designation, primary or secondary. We believe that what the categorical UAA does is narrow the number of water bodies that site-specific UAAs will be required.

Department Response: See Public Process Summary Response.

Hap Ridgway, Elk Creek Ranch: The second thing I'd like to say is we've heard a little bit about outreach. I really appreciate this opportunity tonight, but I agree with other speakers that the outreach was not great early on. I'm down here -- even now there's this one meeting. The governor and his office planning the energy meetings, and there have been two cycles of those, I believe, has six meetings around the state. People don't have to travel five or six hours, get a hotel room and all of that. They can drive to those meetings, get to one of those meetings in one or two hours. It's very difficult to get here. There are many people I know in Cody who are not here who would love to be here.

And as far as notice goes, the Casper Tribune is a great -- is a great paper, I understand that, but it is not as common as the Billings Gazette or the Cody Enterprise or the Powell paper up in our corner of the country. I know we're sort of isolated, but I think outreach includes much better notice, and it includes more meetings.

Department Response: See Public Process Summary Response.

Gary Wilmot, Wyoming Outdoor Council: I know the Wyoming DEQ was attempting to solve a problem when it undertook this rulemaking. Unfortunately, it missed the mark by not including the people that it most affected, the recreation users of our state.

Department Response: See Public Process Summary Response.

Shannon Simms, Medicine Bow Conservation District: Also, I would like to point out that any time that these models are inaccurate, we still had the opportunity to go back and do a site-specific survey. It's cost-effective and a time-efficient model, and I think in today's environment, that's a very important consideration as well.

Department Response: See Public Process Summary Response. Also see Rationale for Modifying Recreation Designated Uses.

Steffen Cornell, Meeteetse Conservation District: While we may disagree with EPA in their assertion that proper public process was not followed previously, we do remain encouraged and optimistic that this public hearing will satisfy EPA and that it will move forward with approving the UAA, as it has proved to be the most logistically feasible and economically appropriate means to identifying waters currently.

Department Response: See Public Process Summary Response.

Evan Reimondo, National Outdoor Leadership School: The third and final is that the public outreach, education and engagement have been insufficient. A rule with broad impacts should be broadly known and understood by the people of Wyoming before it is implemented. Additional outreach efforts should include regional public meetings that provide an overview of the impacts and opportunity for public discourse and comment. Municipalities and businesses near large wildernesses in mountain areas, like Lander, are disproportionately affected by these stream downgrades and should have their own hearings.

Department Response: See Public Process Summary Response.

Kristin Tilly, Shoshone Conservation District: The Shoshone Conservation District supports the categorical use attainability analysis for recreation just as we have through comments made by our association during the numerous opportunities for public input, including September 2013, March 2014 and February 2015, as well as at every monthly public meeting of the board of supervisors of our district just like very one of the 34 conservation districts in Wyoming.

Department Response: See Public Process Summary Response.

Dan Smitherman, Bondurant, WY: I appreciate the opportunity to give my comments. You know, I recreate in all these areas personally. I take my grandkids in there, and I've seen them use these waters, and I think the public and the recreation community needs more opportunity to provide input to the DEQ.

Department Response: See Public Process Summary Response. Also see Changes in Water Quality/Protection of Downstream Uses Summary Response.

Cathy Meyer, Lower Wind River Conservation District: We'd like to point out that the categorical UAA still allows for the individual UAA to be done on specific sites so if something is not properly categorized, it can be changed through a UAA for that specific site.

Department Response: See Public Process Summary Response.

Leann Correll, Saratoga-Encampment-Rawlins Conservation District: One of the things that needs to be pointed out about all of the conservation districts that are represented here tonight, as well as those that are not represented, each one of the conservation districts have a board of directors that are elected by district constituents on the general election ballot by all voters within the district bounds. So each one of those district representatives that serves on that board is there for the best interest of the constituents in their countries and they are elected just like any other elected official. As per elected officials, they have public board meetings every month.

During those public board meetings, there have been multiple opportunities for the public to be involved in the UAA categorical analysis and in that discussion. So although we have maybe a hundred people here, or a little bit more tonight, that represents maybe less than one-tenth of a percent of all the constituents in the state of Wyoming and all the people in the state of Wyoming.

Over that time of about four or four and a half years, there have been multiple opportunities for the public to have input on those local levels, and they have. They've voiced their opinions to those district board members, who are their elected representatives. So there has been a lot of public input into the process of developing that categorical UAA throughout the years.

Department Response: See Public Process Summary Response.

Phil Murphree, Wyoming Mining Association: The Wyoming Mining Association also encourage WDEQ to periodically review and update the web map as more information through the state and new UAA are developed, and this could provide an opportunity for reclassification of many of the streams previously mentioned in the meeting.

Department Response: WDEQ/WQD will update the web map as changes occur.

Wayne Garman, Crook County Natural Resource District: The proposal for implementing the UAA allows people the continuous ability to submit a site-specific recreational use attainability to DEQ to change a designation if that is deemed necessary.

DEQ has operated professionally and offered numerous opportunities for input on the categorical UAA and has invited the submission of additional and site-specific information from the public and user groups.

Department Response: See Public Process Summary Response.

Connie Wilbert, Sierra Club Wyoming Chapter: Some of the biggest concerns that our members have and that I, as a life-long Wyoming resident and a mother, share relate to the failure, we believe, of the Department of Environmental Quality to communicate with the citizens of Wyoming in an effective way about these changes.

We certainly heard tonight that certain constituencies of Wyoming citizens feel they're been well communicated with, and I'm glad for that, I'm glad for them, but it's also been noted that a large constituency of recreational users don't feel that way. Many people who have spoken to me knew nothing about these proposed changes until very recently, and they don't think they've been given a reasonable opportunity to be involved in this decision.

So while I'm glad that the conservation districts have been very well looped in, I'm concerned about just ordinary citizens who haven't heard about this and had a chance to be involved and to express their opinions; therefore, we request that the Department give the public more time to learn about these proposed changes and openly describe what they are to people so that people can understand them and can share their opinions with you. There's a wealth of knowledge out there by people who use these streams on primarily our public lands a lot, and I think that if you listen to them and give them the chance to understand the proposed changes, you'll learn a lot and end with a better product.

Department Response: See Public Process Summary Response.

Chris Bonatti, Casper, WY: Another point that has been made this evening is regarding public -- a sufficient public comment period. I listen for issues of this sort and this month is the first that I've heard of this issue. Public feedback opportunities only work if the public is sufficiently informed about the issue in order to comment back. I heard about his issue this month, and I heard about it from my father-in-law in Virginia, not here.

Department Response: See Public Process Summary Response.

Shaun Sims, Wyoming Association of Conservation Districts: The model is just that. It is a model. It should be noted that if there are streams that are mis-categorized or felt that are mis-categorized, there is an avenue in which to bring them back to the correct categorization.

Department Response: See Public Process Summary Response.

Jim Magagna, Wyoming Stock Growers Association: I'm representing the Wyoming Stock Growers Association, our over 1,000 members, and I'll comment about four areas briefly.

First, with regards to the notice process on reclassification. We were certainly aware of the process you're undertaking. We saw those notices. We were aware that there was a public meeting. We did not participate in any of those because the process you were proposing just seemed to be so logical a way to address the issue, we did not anticipate it would be controversial and we felt no need to engage at that point in time. Obviously, history has proven us perhaps incorrect on that.

I think it's important that we recognize that you've provided a methodology to reclassify streams on an individual basis. I believe that's the tool that we should all use in order to change classifications where change in classification is appropriate.

I would ask, though, that as you address petitions which you may be receiving to reclassify streams from secondary recreation to primary recreation that there are some key factors that need to be kept in mind.

The first of those is attainability. It's not whether I would like a stream to be classified as primary recreation, it's whether the E. coli level that is necessary for that classification can be attained and maintained. If the stream that's been petitioned for a higher classification currently contains a higher E. coli level than that that is specified for a primary recreation, then the question needs to be asked what is the cause of those higher levels? Is it a naturally-occurring cause? Is it occurring on a major -- on a long segment of the stream?

I certainly from the many, many years, over 40 that I spent in the Wind River Mountains, can think of streams where there's a pool of water in the stream that certainly lent itself to full-body immersion -- I probably took advantage of that at least when I was younger -- but does that pool represent that stream segment or does it represent a single spot within the stream? I think that's an important criteria to look at. And what's the cause of higher E. coli levels? Is it a natural cause? Is it human caused? Is it caused by wildlife, by livestock, et cetera?

And finally, I would ask that as you look at these, many, if not all, of these streams flow through private lands at some point in time, and I think notice to and consultation with the private landowner when a stream is being considered for reclassification is also very critical.

We did not this time submit written comments, but we want to stand in strong support of the approach you've taken and the opportunity that you've provided for the citizens of Wyoming to come forward with whatever evidence any of us may have that would justify a reclassification of a stream from the classification you've given it this point in time.

Department Response: See Public Process Summary Response.

Ted Lapis, Public Land User Committee: I would ask that you have more meetings around the state. I talked to a number of people in Sheridan who did not know about this and found it difficult to get away and come down.

I think that if you had more hearings in areas of the state, you would have a better selection, a cross-section of the public, as opposed to people who work for the conservation districts or some sort of professional -- have a professional interest. So I don't think your sample here is representative.

Department Response: See Public Process Summary Response.

4.7 Other

Cam Eddy, Wilson, WY: This process of 'public comment' is not made easy. For whatever reason the map files could not produce any viable information for this citizen.

Department Response: WDEQ/WQD can provide maps and other information at any time upon request.

Dan Heilig, Wyoming Outdoor Council: *Threshold Issue #4: The Wyoming Environmental Quality Act Requirement for the use of Credible Data has not been met.*

The Wyoming Environmental Quality Act (WEQA) and its implementing regulations require the use of "credible data" to support designating uses of surface waters and determining whether designated uses have been attained. W.S. §§ 35-11-103(c)(xix), 35-11-302(b)(i) and (ii). The DEQ's categorical UAA failed to comply with Wyoming's credible data law and should be corrected as a result of information received at the September 16th hearing and information submitted during the related public comment period.

The WEQA requires the use of credible data in both designating uses of surface water and in determining a water body's attainment of designated uses. See W.S. § 35-11-302(b). According to the statute, "'Credible data' means scientifically valid chemical, physical and biological monitoring data collected under an accepted sampling and analysis plan, including quality control, quality assurance procedures and available historical data." W.S. § 35-11-103(c)(xix).

Specific regulatory requirements concerning the collection of credible data and requirements for its use are set forth in the DEQ's Water Quality Rules and Regulations at Chapter 1, Section 35. Section 35(b) requires that: "Credible data shall be collected on each water body... [and] shall be used... to designated uses and determine whether those uses are being attained."

Section 35(c) provides that, "All changes to use designations after the effective date of this rule shall include the consideration of credible data relevant to the decision. Changes which involve the removal of a use designation or the replacement of a designation shall be supported by a use attainability analysis (UAA)."

And Section 35(d) states that: "After the effective date of this rule, credible data shall be utilized in determining a water body's attainment of designated uses."

These requirements could not be stated any more clearly, yet it appears to us that *no data* meeting credible data standard were utilized in the development of the DEQ's UAA. Indeed, the DEQ's

approach was just the opposite: the agency justified the downgrades based on the *absence* of site-specific data demonstrating existing or attainable primary contact recreation uses. Not only does this approach violate the credible data law, it unlawfully shifts the Clean Water Act's presumption of "fishable/swimmable" to the public. As noted above, the EPA made it clear in its June 3, 2015, letter that this burden lies with the state. And the state's credible data law increases this responsibility. If we consider the first two steps in the DEQ's UAA, step one being the identification of streams with low flow, and step two being the identification of streams that may not support primary contact recreation because of remoteness, it is apparent the credible data, as defined in the statute, was not used by DEQ "in determining water body's attainment of designated uses []" as required by W.S. § 35-11-302(b)(ii).

When we consider step one, as discussed in the Wyoming Outdoor Council January 5, 2015, letter to EPA, several deficiencies are apparent relative to the credible data requirement. A total of approximately 850 stream surveys were done, or one survey per 135 stream miles (or per 331 miles depending on the dataset that is used.) As stated in our letter to EPA on page 7, "no site-specific information was available to validate assumptions made regarding flows on thousands of miles of stream segments." Furthermore, DEQ's efforts to analyze stream depths in low-flow streams suffered from severe shortcomings, representing little more than guesses about stream depths.

Of the 850 field surveys, local conservation districts visited more than 700 sites but apparently not all of these visits occurred during the summer recreation season, which given the seasonal variability of flows, undermines the relevance of the data for assessing contact recreation activities during the summer recreation season. Moreover, based on the DEQ's designated uses web map, it appears that the majority of site visits occurred in areas accessible via motor vehicles, with a much smaller sampling of stream accessible only by foot or horseback. As we explained in our January 5, 2015 letter to EPA, streams located in prairie grasslands or sage steppe are morphologically very different from mountain streams, such differences include flow regime, channel width, channel depth, stream gradient, presence of pools, water quality, etc. Step one also did not consider summer weather patterns (i.e., afternoon showers) or mountain snowpack levels and melt-off rates, all of which can influence flows and therefore availability of water for contact recreation.

The DEQ and local conservation districts used worksheets to collect data during field surveys. See UAA Appendix C. Stream location data and responses to questions asking for opinions about opportunities for recreation use listed on the worksheets cannot even remotely be considered credible data as defined by statute. As noted on the survey form, "the information gathered during the statewide survey will ultimately be compared to the *predictions* of a Geographic Information System (GIS) based Recreational Use Model that is currently being developed by WDEQ." (emphasis added). Assuming an average of one survey per 135 stream miles, and one mile segment surveyed, that leaves 134 stream miles un-surveyed and therefore subject only to predictions about whether a use is existing or attainable. Not only does this approach not satisfy the requirements of the credible data law, it fail to satisfy the most permissive reading of EPA's and DEQ's UAA requirements, which require "demonstration" made through a structured scientific assessment that primary contact is neither existing nor attainable to support a downgrade.

The DEQ's efforts fail to meet the credible data requirement. They provide no indication that "soils, geology, hydrology, geomorphology, climate, stream succession, and human influence on the environment" have been considered. W.S. § 35-11-302(b)(i). It is not apparent that an "accepted referenced laboratory or field method []" has been employed or that the people conducting the surveys had "specialized training and [] field experience in developing a monitoring plan." DEQ Water

Quality Rules and Regulations Chapter 1 Section 35(a)(i). Moreover, under the DEQ's Water Quality Rules and Regulations, these data must be collected on *each* water body, which is certainly not apparent. See Water Quality Rules and Regulations Chapter 1 Section 35(b) (stating, "Credible data shall be collected on *each* water body.") (emphasis added). And were the DEQ to be seeking the "not practical or feasible" exception to the credible data rule, it would need to provide evidence that collecting these data was in fact not practical or feasible, which has not even been attempted.

Even if true, claims by DEQ that "all readily available data" have been considered do not meet the credible data requirements. Neither the Wyoming Environmental Quality Act nor the DEQ Water Quality Rules and Regulations ever mention ready availability of data as a substitute for "credible data." Credible data is defined to mean "scientifically valid chemical, physical, and biological monitoring data collected under an accepted sampling and analysis plan, including quality control, quality assurance procedures and available historical data." W.S. § 35-11-103(c)(xix). This is the standard that must be met, not ready availability, and there is no indication the DEQ has developed the UAA pursuant to these requirements or made its designated uses analyses based on the best available science (credible data), as required by law.

There are also significant flaws with respect to step two of the UAA analysis. Here DEQ subjectively decided that streams more than a mile from populated places and schools, or more than half a mile from established campgrounds and trailheads, were too remote to enjoy primary contact recreation. It reasoned that because large areas of the state are uninhabited, low flow streams in these areas would not attract children or the general public for recreational purposes. But in reality, as discussed in the January 5, 2015, WOC letter to EPA, school children roam widely in pursuit of recreation, as does the adult population. And in fact, for many, remoteness is a major attraction rather than a hindrance to recreation. Wyoming's vast areas of public lands, including the huge areas DEQ downgraded to secondary contact recreation, are almost uniformly open to public recreation and are widely used for recreation by vast numbers of people.

There is no indication the analysis in step two was based on accepted laboratory or field methods or was based on specialized training or field experience for developing a monitoring plan, as is required by the Wyoming Water Quality Rules and Regulations. It was not based on the consideration of "human influence on the environment" as required by the Wyoming Environmental Quality Act (only human *recreation* to the environment was possibly considered). There is no indication it would not be "practical or feasible" to gather this information in a more scientifically valid manner.

Importantly, the credible data requirement is to be based on a "weight-of-evidence approach." Wyoming Water Quality Rules and Regulations Chapter 1 Section 35(b). As shown in the WOC Letter to EPA, it is clear the weight of evidence does not support a recreation use downgrade under either step one or step two of the existing UAA analysis. And again, we note the burden is on the state to support any downgrades of recreation uses, and that burden, under Wyoming law, cannot be met when credible data is not used.

Quite clearly, the requirement for the use of credible data to support changes to use designations and to determine a water body's attainment of designated uses is not, as asserted by DEQ in its response to comments, limited to data that is "readily available." The record shows that the DEQ did not consider anything resembling "credible data" in making its decision to downgrade waters statewide from primary to secondary contact recreation. As a result, the Administrator's August 20, 2014, decision reclassifying surface waters must be withdrawn.

Department Response: See Approach for Identifying Waters for Secondary Contact Recreation Summary Response. Also see Changes to Water Quality/Protection of Downstream Waters.

The Environmental Quality Act, W.S. § 35-11-302(b), directed WDEQ/WQD to develop a schedule for the use of credible data in designating uses of surface waters consistent with federal requirements. WDEQ/WQD adopted provisions in Chapter 1, Section 35(c), which describes:

“All changes to designations after the effective date of this rule shall include the consideration of credible data relevant to the decision. Changes which involve the removal of a use designation or the replacement of a designation shall be supported by a use attainability analysis (UAA).”

Implementing regulations for the federal Clean Water Act at 40 CFR § 131.10 describe the requirements for changes to designated uses.

“States may designate a use, or remove a use that is not an existing use, if the State conducts a use attainability analysis as specified in § 131.10(j) that demonstrates attaining the use is not feasible because of one of the six factors in this paragraph. If a State adopts a new or revised water quality standard based on a required use attainability analysis, the State shall also adopt the highest attainable use, as defined in § 131.3(m).

WDEQ/WQD worked closely with EPA during development of the Categorical UAA to ensure consistency with federal requirements. To this end, WDEQ/WQD significantly revised the approach of the Categorical UAA so that the analysis relied on UAA factor 2, at 40 CFR § 131.10(g)(2), to demonstrate that attaining primary contact recreation was not feasible.

UAA factor 2, at 40 CFR § 131.10(g)(2) states “Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating State water conservation requirements to enable uses to be met.”

This is the entirety of EPA’s regulatory requirements regarding changes to designated uses relevant to the *Categorical UAA for Recreation*.

Therefore, credible data relevant to the decision in determining whether primary contact recreation is an attainable use are data that represent “natural, ephemeral, intermittent or low flow conditions or water levels.” WDEQ/WQD used the Enhanced United Runoff Method (EROM) modeled mean annual flow data available in NHDPlus V2 to identify ephemeral, small intermittent, and small perennial streams and ditches which, on average, would not have sufficient flow to support full body immersion during the summer recreation season. NHDPlus is a geospatial, hydrologic framework dataset built by the United States EPA Office of Water, assisted by the United States Geological Survey (USGS)⁸. The EROM modeled mean annual stream flow were available for all networked flowlines (channel segments) in NHDPlus V2 (McKay et al. 2013).

The modeled flow data is based on a flow balance model. The flow balance approach takes precipitation, potential evapotranspiration (PET), evapotranspiration (ET), and soil moisture storage into account. PET and ET calculations include air temperature. Mean annual flow values were also

⁸ <http://www.horizon-systems.com/nhdplus/>

calibrated and validated with USGS gage data (McKay et al. 2013). These data included consideration of “hydrology and climate,” as articulated in Chapter 1, Section 35 (b). In addition, when calibrated with USGS gages, the flow data takes into consideration other influences such as soils, geology, and geomorphology as they relate to mean annual flow.

WDEQ/WQD also considered the “influences of man” (Chapter 1, Section 35(b)) on flows and “whether these conditions may be compensated for by the discharge of sufficient volume of effluent discharges,” 40 CFR 131.10(g)(2), through calibration of modeled flows with gage data and also by including mean flows from point source discharges into the mean annual flow estimates.

The EROM flow estimates were very comparable to the measured mean annual flow of 189 USGS gages in Wyoming ($R^2 = 0.86$). The EROM flow data also overestimated mean annual flows measured at USGS gage sites; EROM mean annual flow estimates were approximately 1.2 times the mean annual flows measured at USGS gages. As noted in UAA, WDEQ/WQD also used site-specific information when it was available. Site-specific information included USGS flow gage data, flow data collected by other entities, and site-specific UAAs submitted to WDEQ/WQD.

WDEQ/WQD considers the NHDPlus V2 EROM flow data both credible and scientifically defensible. The 6 cfs flow threshold selected by WDEQ/WQD was not intended to represent every possible flow condition present in the low flow channels, but to identify those channels which, on average, would not have sufficient flow to support full body immersion during the summer recreation season. Average hydrologic conditions are appropriate for designating recreational uses since average hydrologic conditions control for anomalous flows, precipitation events, or drought conditions. Other states evaluate flow and/or depth conditions during average conditions, i.e., baseflow, to demonstrate that attaining primary contact recreation is not attainable (see, for example, Missouri Recreational Use Attainability Analysis: Water Body Survey and Assessment Protocol 2007⁹).

WDEQ/WQD has not received any detailed, site-specific information through informal feedback, during the three written comment periods, the public meeting, or the public hearing that suggests the modeled mean annual flow of 6 cfs is not an appropriate threshold for identifying those low flow channels which, on average, would not have sufficient flow to support full body immersion during the summer recreation season. WDEQ/WQD therefore has no indication that the approach is inaccurate and needs to be revised.

Flow data was considered in combination with other information representing populated places and accessible recreation sites to designate waters for secondary contact recreation. Access datasets and buffer distances used in the analysis were incorporated to exclude those ephemeral, small intermittent, and small perennial streams and ditches with the greatest likelihood of being used for water play by small children with contact with the water equivalent to swimming based on the proximity of the low flow channel to populated places, schools, and accessible recreation sites. These data sets were included to be consistent with EPA’s recommendation that recreation UAA’s include consideration of child’s play and DEQ’s Recreation UAA guidance that identifies waters outside of “federal, state, or local park or recreation area” described as “specifically developed and/or designated recreational use areas such as campgrounds, picnic grounds, greenways, etc.,” or “municipality or unincorporated high density housing area” as candidates for secondary contact recreation.

⁹ http://dnr.mo.gov/env/wpp/wqstandards/uaa/docs/wpp_wqs_uaa.pdf

Site-specific surveys completed by WDEQ/WQD and Conservation Districts were used to validate the results of the UAA. The results of the surveys indicate that the UAA performs very well and that the flow threshold selected by WDEQ/WQD is a good indicator of whether or not there is sufficient flow to support full body immersion. Available information indicates that the designations made through the Categorical UAA are a much more accurate reflection of existing and attainable recreational uses in Wyoming's low flow channels and that the UAA has served the intended purpose of reducing the number of site-specific UAAs that will need to be completed.

As outlined in the *Categorical UAA*, the UAA used the best available information to identify waters where swimming or similar water contact activities (i.e., primary contact recreation) are not existing or attainable uses. However, because the *Categorical UAA* was developed at a state-wide scale, WDEQ/WQD recognizes that the designations may not perfectly align on every stream in the State.

WDEQ/WQD is committed to appropriately designating uses on surface waters in the State and will continue to work collaboratively with interested stakeholders to ensure that designated recreational uses are reflective of existing and attainable uses. WDEQ/WQD believes that the site-specific approach will ensure that WDEQ/WQD receives the information necessary to modify designated uses where appropriate.

Chapter 1, Section 35(d) "After the effective date of this rule, credible data shall be utilized in determining a water body's attainment of designated uses" refers to whether or not water quality standards are met, not the designation of uses, which is described in Chapter 1, Section 35(c). *Wyoming's Methods for Determining Surface Water Quality Condition and TMDL Prioritization* (WDEQ/WQD 2014) describe in detail how WDEQ/WQD determines whether water quality standards are met and designated uses are attained.

Dan Heilig, Wyoming Outdoor Council: *Other streams and ditches.* The UAA (at p. 32) notes that the DEQ "is also aware of other streams and ditches not depicted in either the 100k or 24k NHD." The UAA should have provided information about those surface waters, including location, physical, biological and chemical properties, whether primary contact recreation is existing or attainable, and whether they are being downgraded. What is the status of those "other streams and ditches"?

Department Response: A water that WDEQ/WQD is aware of that is not depicted in the NHD is a small ditch that flows through a residential neighborhood. Based on the design of the UAA to retain primary contact recreation on all waters located within "primary areas," the ditch remains designated for primary contact recreation.

Dan Heilig, Wyoming Outdoor Council: *Magnitude and scale of surface water downgrade.* The Categorical UAA states (at 1) that of the "115,373 stream miles depicted in the 1:100,000 national Hydrography Dataset (NHD) that were addressed in this UAA, primary contact recreation is not an attainable or existing use on 87,775 miles, or 76.1% of the stream miles." Presumably, the remaining 27,598 stream miles in the 100k dataset retain the primary contact recreation use designation. This should be stated clearly in the UAA.

Department Response: Table 2 in the Categorical UAA dated August 2014 included information on stream miles, including those that retained the primary contact designation. Also See Changes in Water Quality Summary/Protection of Downstream Waters Summary Response.

Dan Heilig, Wyoming Outdoor Council: The UAA also indicates (at 32) that the more detailed 1:24,000 NHD contains 281,000 stream miles in Wyoming, which presumably include the 116,000 miles in the 100k NHD plus an additional 165,000 stream miles comprised of intermittent and ephemeral streams. The UAA concludes that, “streams not present in the 100k NHD do not have sufficient flow to support primary contact recreation and will be designated for secondary contact, unless they are located in areas that are easily accessible to children and/or the public.” *Id.* at 32. Based on these figures, it appears that a total of 253,402 stream miles have been reclassified to secondary contact recreation. Is that correct?

Department Response: The 24k and 100k NHD cannot be directly compared, so the calculated miles are not correct. The 100k NHD and the 24k NHD have thousands of flowlines that represent the same waters, but at different scales (see Figure 1 below for 3 such examples). Flowline segments in the 24k NHD are typically digitized at a finer resolution, so the same segment in the 100k NHD may have fewer meander bends or braided sections. Therefore the mileages of 24k NHD flowlines are much higher than the mileages of 100k NHD flowlines, even though they are depicting the same section of channel. WDEQ/WQD is unaware of any way to “crosswalk” the 100k NHD to the 24k NHD so that the mileages can be calculated accurately.

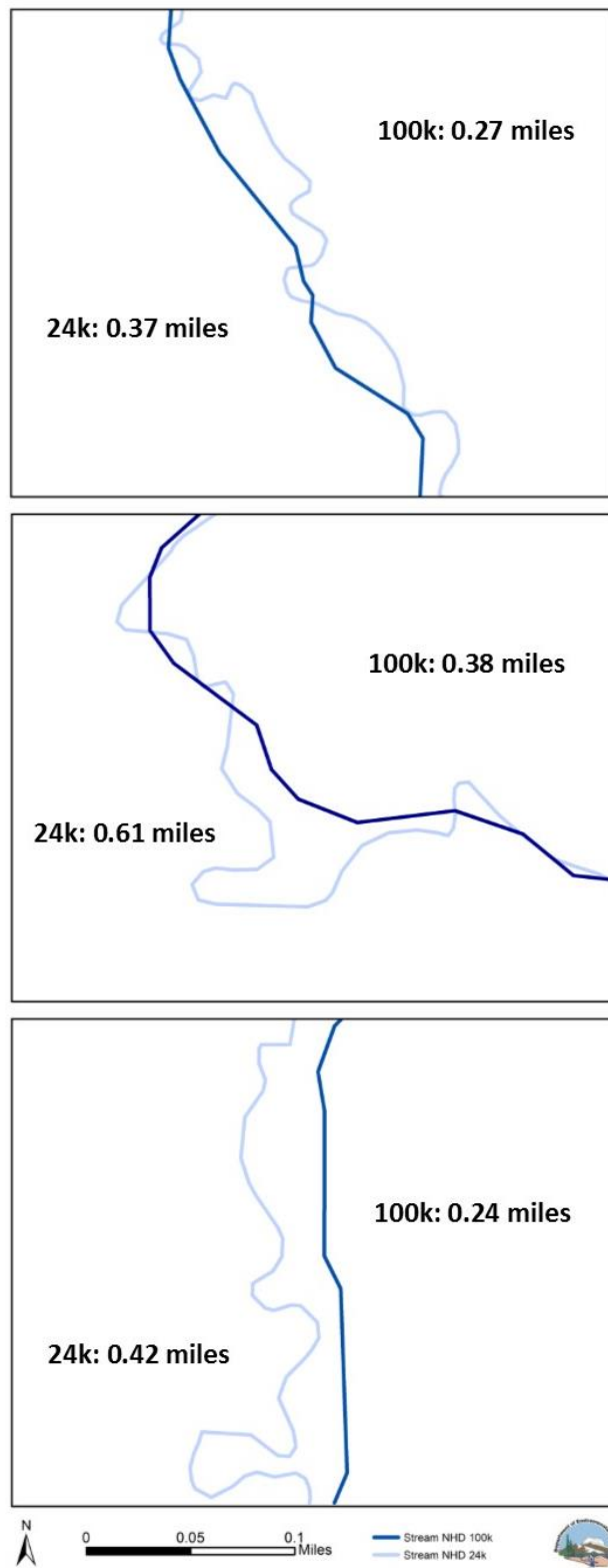


Figure 1. Maps depicting the same channel segments in the 24k and 100k National Hydrography Datasets.

4.8 Comments with Site-Specific Information

WDEQ/WQD evaluated comments with site-specific information using the language provided in the July 2015 public notice. “Documentation provided should be sufficient for WDEQ/WQD to confirm whether primary contact recreation is an existing or attainable use, or not, on a particular stream. Such information may include photographs, flow data, and other information at the level of detail described in the worksheets contained in Appendix C of the Categorical UAA. Modification of a surface water designation established in the Categorical UAA will require the presentation of information sufficient to identify: (1) the location of the stream (e.g., latitude and longitude, object ID provided in the web map, etc.) and (2) the existing and potential recreational activities associated with the stream, given the physical condition of the stream.”

Language in the July 2015 public notice was modeled on language provided by EPA in their June 3, 2015 letter to WDEQ, which stated “As a general matter, the EPA expects that the burden of proof to rebut the presumption for uses specified in CWA § 101(a)(2) remains with the state. However, the EPA does consider it reasonable for Wyoming to expect the public to assist in providing information sufficient to identify: (1) the location of the stream (e.g., latitude and longitude, object ID provided in the web map, road mile marker); and (2) existing or potential recreational activities in the context of the physical condition of the stream. Public commenters may provide any number of pieces of information, and such information could come from user testimony during the hearing, user written comments, photos, flow data, or data from the UAA worksheet in Appendix C of the UAA.”

Andy Blair, Lander, WY: In Lander City Park, children routinely play in a ditch, drawn from the Middle Fork of the Popo Agie, that runs at less than 1 CFS for much of the summer.

Department Response: All channels, regardless of flow, within and one mile from high density housing areas are designated for primary contact recreation. This includes all ditches within these areas.

Cam Eddy, Wilson, WY: The town of Wilson where my P.O. box lives has the GPS coordinates of Latitude: 43.4992 and a longitude: -110.8742. My letter here pertains to ALL “secondary” surface waters within a 25 mile radius. My family (3 girls) play, walk and actively get into all sorts of “secondary” surface waters in the headwaters of Phillips (north of highway 22), Mosquito Creek, Trail Creek, Fall Creek (North and South Forks), all down the Snake River Canyon etc.

Department Response: WDEQ/WQD’s understanding is that some of the waters identified are Class 1 waters and have been withdrawn from the analysis. The comment above does not provide sufficient information to designate waters for primary contact recreation. As identified in the July 2015 public notice, WDEQ/WQD would need information sufficient to identify: (1) the location of the stream(s) (e.g., latitude and longitude, object ID provided in the web map, etc.) and (2) the existing and potential recreational activities associated with the stream, given the physical condition of the stream. The above comment does not provide either of these elements. WDEQ/WQD recommends working with the department to provide sufficient information to demonstrate that the waters identified above support full body immersion or small children have regular contact with the water equivalent to swimming during the summer recreation season.

Ellen Fales, Wilson, WY: I have identified two streams in Teton County that need to be designated as: PRIMARY DUE TO ACCESS.

Both of these streams are bathing areas for locals on a regular basis in the summer. The Butler Creek stream runs right into a pond that we swim in.

Fall Creek, Latitude 43.395747, Longitude 110.850601

Butler Creek, Latitude 43.385199, Longitude 110.830109

Attached are screen shots of your map with notations.

Department Response: The comment above does not provide sufficient information to designate waters for primary contact recreation. As identified in the July 2015 public notice, in addition to locations, WDEQ/WQD would need information sufficient to identify the existing and potential recreational activities associated with the stream, given the physical condition of the stream. The above comment does not enough detail about the physical conditions of the streams (i.e., are there pools capable of supporting full body immersion, do children have regular contact with the water equivalent to swimming, etc.). WDEQ/WQD recommends working with the department to provide sufficient information to demonstrate that the waters identified above support full body immersion or small children have regular contact with the water equivalent to swimming during the summer recreation season. It is also important to note that a tributary to a pond does not need to retain a primary contact designation to ensure that the water quality of the pond is maintained– see **Changes in Water Quality/Protection of Downstream Waters Summary Response.**

Dave Hohl, Pinedale, WY: I own 21 acres near the upper Sweetwater River. This property has a stream (42.5544311, -109.0833675,483) running through it for which the standard has been lowered. During the 15 plus year course of constructing a cabin (ongoing) I have stayed in a sheep camp on the site. While I have brought, and continue to bring potable water from town, I also use the creek as supplemental water for cooking and dish washing, and for bathing using either a sun shower or dipping water from the creek to wash and rinse. I consider this primary contact.

Department Response: Based on the information provided, the creek described does not support full body immersion and is not used by small children with a level of contact with the water equivalent to swimming. As such, the creek should remain designated for secondary contact recreation. If this is incorrect, WDEQ/WQD recommends working with the department to provide sufficient information to demonstrate that the creek is capable of supporting full body immersion or small children have regular contact with the water equivalent to swimming during the summer recreation season. Also see **Recreational Designated Uses and Water Quality Criteria Summary Response** for additional clarification on primary contact recreation use.

George Jones, Laramie, WY: On national forest lands, many people walk or drive over a half-mile from trailheads, and they wade, wash up, and splash around in small streams. Here are examples of areas that I have personal knowledge of:

- The Pole Mountain area of the Medicine Bow National Forest, where streams proposed for secondary classification in the upper parts of Lodgepole Creek, North Branch Crow Creek, and Brush Creek are easily accessible from forest roads; in fact, a major forest road runs alongside Brush Creek.
- The Snowy Range is a very heavily used recreation area. People hike all through the area east of Medicine Bow and Brown's peaks, where the upper reaches of Libby Creek and Telephone Creek have been proposed for secondary classification.

- In the southern Wind Rivers, I have been to the head of Silas Canyon twice, and know that hikers and anglers frequent the area. The upper reach of Silas Creek has been proposed for secondary classification.
- In the northern Wind Rivers, Double Lake Creek and other nearby tributaries to Dinwoody Creek, proposed for secondary classification, flow through an area frequented by backpackers on their way up the Glacier Trail. I know from personal experience that people stop to refresh themselves and to camp along these streams.
- Last week I was in the Green River drainage upstream from Green River Lakes. A number of small tributaries at the head of Green River are proposed for secondary classification, and some of them are near to trails frequented by backpackers in the area.

Department Response: The comment above does not provide sufficient information to designate waters for primary contact recreation. As identified in the July 2015 public notice, WDEQ/WQD would need information sufficient to identify: (1) the location of the stream(s) (e.g., latitude and longitude, object ID provided in the web map, etc.) and (2) the existing and potential recreational activities associated with the stream, given the physical condition of the stream. The above comment does not provide either of these elements. WDEQ/WQD recommends working with the department to provide sufficient information to demonstrate that the waters identified above support full body immersion or small children have regular contact with the water equivalent to swimming during the summer recreation season. Also see Recreational Designated Uses and Water Quality Criteria Summary Response for additional clarification on primary contact recreation use.

Shari Kearney, Lander, WY: Already we need to treat the water we drink because of pathogens present in even the most remote locations. I might not go swimming in the cold mountain water, but I do worry about that hand full of water I might splash on my face on a hot dusty day. There are lots of great holes in little streams I've seen my friends (or other recreational users): take a dip or splash in: Southwest Absarokas – Fall Creek, Trail Creek (north of the Buffalo Fork), Turner Fork, Middle Fork of Long Creek
Northern Winds – Phillips Lake, Double Lake, the creek flowing in front of “Williamson Corral” north of Arrow Pass
Central Winds – Monument Creek, Middle and North Fork of Boulder Creek

Department Response: The comment does not provide sufficient information to designate waters for primary contact recreation. As identified in the July 2015 public notice, WDEQ/WQD would need information sufficient to identify: (1) the location of the stream(s) (e.g., latitude and longitude, object ID provided in the web map, etc.) and (2) the existing and potential recreational activities associated with the stream, given the physical condition of the stream. The above comment does not provide either of these elements. WDEQ/WQD recommends working with the department to provide sufficient information to demonstrate that the waters identified above support full body immersion or small children have regular contact with the water equivalent to swimming. Also see Recreational Designated Uses and Water Quality Criteria Summary Response for additional information on primary contact recreation use.

Linda Olinger, Riverton, WY: The creeks we use are: Townsend Creek, Little Popo Agie at Louis Lake Road (bridge), and Fiddlers Creek and Canyon Creek. All in Shoshone National Forest. There are more, but some whose names I don't know.

Department Response: The comment does not provide sufficient information to designate waters for primary contact recreation. As identified in the July 2015 public notice, WDEQ/WQD would need

information sufficient to identify: (1) the location of the stream(s) (e.g., latitude and longitude, object ID provided in the web map, etc.) and (2) the existing and potential recreational activities associated with the stream, given the physical condition of the stream. The above comment does not provide either of these elements. WDEQ/WQD recommends working with the department to provide sufficient information to demonstrate that the waters identified above support full body immersion or small children have regular contact with the water equivalent to swimming during the summer recreation season.

Bruce Pendery, Logan, UT: I have used small streams for primary contact recreation like bathing, drinking, and cooking in the following areas. In the Titcomb Basin and on Tourist Creek in the Wind River Mountains in Sublette County. I have also used Clear Creek and Slide Creek on the west side of the divide in the Wind Rivers in Sublette County. On the east side of the divide I have used small streams in the vicinity of Bomber Lake and Upper and Lower Ross Lakes in Fremont County, including East and West Torrey Creeks. I have used small streams in head water areas on both the east and west sides of the divide in the Wind Rivers in the Cirque of the Towers region in Sublette and Fremont Counties. I have used Rapid Creek and tributaries of the Popo Agie River in those areas. On the far north end of the Wind Rivers on the route into Three Rivers Mountain I have used the Seven Lakes Basin and Streams in it for primary contact recreation. On the far south end of the Wind Rivers I have hiked into the Little Sandy Creek area and used those streams in Sublette County.

Outside of the Wind Rivers I have used a number of small low flow streams for primary contact recreation. In the Wyoming Range in Lincoln County I have used head water streams of the Smiths Fork and LaBarge Creek. I have also used tributaries of the Greys River in the northern portions of the Greys River drainage. In the Bighorn Mountains I have used the upper reaches of Teen Sleep Creek and small streams on the southeastern part the range in Johnson County. I have used Cub Creek and its tributaries in the Teton Wilderness in Fremont County and also used DuNoir Creek and its tributaries just outside of the wilderness on a backpacking trip.

Here I note one more stream that I would like added to that list. This is the small, apparently unnamed stream that is a tributary of Porcupine Creek in the Wind River Mountains near upper and Lower Green river Lakes. This small stream drains the Twin Lakes as well as several other Lakes. It is located in Sublette County. In the day hike I did up this creek I engaged in primary contact recreation with the stream including bathing and swimming.

Department Response: See Recreation Designated Uses and Water Quality Criteria Summary Response for clarification on primary contact recreation use, as cooking and drinking are not primary contact recreation uses. It is also WDEQ/WQD's understanding is that some of the waters identified are Class 1 waters and have been withdrawn from the analysis.

The comment does not provide sufficient information to designate waters for primary contact recreation. As identified in the July 2015 public notice, WDEQ/WQD would need information sufficient to identify: (1) the location of the stream(s) (e.g., latitude and longitude, object ID provided in the web map, etc.) and (2) the existing and potential recreational activities associated with the stream, given the physical condition of the stream. The above comment does not provide either of these elements. WDEQ/WQD would need additional detail regarding whether the streams are capable of supporting full body immersion or children have regular contact with the water equivalent to swimming. WDEQ/WQD recommends working with the department to provide sufficient information to demonstrate that the waters identified above support full body immersion or small children have regular contact with the water equivalent to swimming during the summer

recreation season. Also see Recreational Designated Uses and Water Quality Criteria Summary Response.

Leslie Peterson, Wilson, WY: I have lived nearly all of my 74 years in Dubois and Jackson (Wilson mostly.) I am thoroughly familiar with many of the streams that are shown in red in the poor maps I've been able to see. For years I cooked in our hunting camps on Bear Creek and the East Fork of the Wind River in Dubois. I spent many days at Simpson Lake at cabins we leased for decades from the Forest Service before the area went into Fitzpatrick Wilderness. I live near Fish Creek now in Wilson. I spent 8 years on the State's Water Development Commission and toured many other Wyoming streams during that time. My father was a Forest ranger in Dubois during my early youth and I spent many days with him on Sheridan Creek and other streams.

There are numerous small streams on the map that are little tributaries of highly important recreational streams. I could list a huge number of streams you have listed that I do not think should be downgraded, but that listing would be fairly meaningless as I am unable to provide a GPS description of each. Basically I disagree with any listing from Burris north that lies in Fremont County and all of Teton County.

You should consider deleting your downgrade for the whole northwest corner of Wyoming that I've described where the values are based more on scenery, recreation and wildlife and less on mineral production and large agricultural operations.

Department Response: See Recreation Designated Uses and Water Quality Criteria Summary Response for clarification on primary contact recreation use. Also See Changes to Water Quality/Protection of Downstream Waters Summary Response.

WDEQ/WQD's understanding is that some of the waters identified are Class 1 waters and have been withdrawn from the analysis. For the other waters, the comment does not provide sufficient information to designate waters for primary contact recreation. As identified in the July 2015 public notice, WDEQ/WQD would need information sufficient to identify: (1) the location of the stream(s) (e.g., latitude and longitude, object ID provided in the web map, etc.) and (2) the existing and potential recreational activities associated with the stream, given the physical condition of the stream. WDEQ/WQD would need additional detail regarding whether the streams are capable of supporting full body immersion or children have regular contact with the water equivalent to swimming. WDEQ/WQD recommends working with the department to provide sufficient information to demonstrate that the waters identified above support full body immersion or small children have regular contact with the water equivalent to swimming during the summer recreation season.

Henry Phibbs, Wilson, WY: The map of the streams which will be seriously degraded in Teton County includes virtually every headwaters stream that flows into larger heavily used recreational waters in the Jedediah Smith Wilderness and the Gros Ventre Wilderness. As a long time resident and former county commission of Teton County I ask that you withdraw the reclassification from all waters in Teton County.

Department Response: See Recreation Designated Uses and Water Quality Criteria Summary Response for clarification on primary contact recreation use. Also See Changes to Water Quality/Protection of Downstream Waters Summary Response and Maintaining Water Quality Summary Responses.

WDEQ/WQD's understanding is that some of the waters identified are Class 1 waters and have been withdrawn from the analysis. For other waters, the comment does not provide sufficient information to designate waters for primary contact recreation. As identified in the July 2015 public notice, WDEQ/WQD would need information sufficient to identify: (1) the location of the stream(s) (e.g., latitude and longitude, object ID provided in the web map, etc.) and (2) the existing and potential recreational activities associated with the stream, given the physical condition of the stream. WDEQ/WQD would need additional detail regarding whether the streams are capable of supporting full body immersion or children have regular contact with the water equivalent to swimming. WDEQ/WQD recommends working with the department to provide sufficient information to demonstrate that the waters identified above support full body immersion or small children have regular contact with the water equivalent to swimming during the summer recreation season.

Sandy Shuptrine, Jackson, WY: Dick [Shuptrine] has a valid water right on Game Creek for the purpose of irrigation, for both growing and maintaining defensible space as regards to wildfire. We are both concerned about E. coli levels in Game Creek whose headwater have been reclassified as secondary in the new WDEQ UAA model. There have been instances of E. coli contamination thought to be from irrigation causing serious consequences in other parts of the country. We hope Wyoming's waters will maintain the highest level possible. Ranchlands should perhaps be treated differently, especially for ephemeral streams on private lands. 6 cfs threshold is too high.

Dick [Shuptrine] is a sole operator who spends his time in the field and does not have/use GPS or field photo tools – something that seems to be assumed in the current model.

Department Response: The comment above does not provide sufficient information to designate waters for primary contact recreation. As identified in the July 2015 public notice, WDEQ/WQD would need information sufficient to identify: (1) the location of the stream(s) (e.g., latitude and longitude, object ID provided in the web map, etc.) and (2) the existing and potential recreational activities associated with the stream, given the physical condition of the stream. WDEQ/WQD would need additional detail regarding whether the streams are capable of supporting full body immersion or children have regular contact with the water equivalent to swimming. WDEQ/WQD recommends working with the department to provide sufficient information to demonstrate that the waters identified above support full body immersion or small children have regular contact with the water equivalent to swimming during the summer recreation season.

Connie Wilbert, Associate Organizer, Sierra Club Wyoming Chapter: We note the following areas of special concern:

- The Snowy Range: very heavily used for recreation, including small streams proposed for reclassification too numerous to list.
- Medicine Bow National Forest: very heavily used for recreation, including (but not limited to) Brush Creek, Lodgepole Creek and Crow Creek tributaries.
- Teton County: very heavily used for recreation, including (but not limited to) Gros Ventre River tributaries and Palisades area streams.
- Wind River Range: very heavily used for recreation, all streams.

Department Response: The comment above does not provide sufficient information to designate waters for primary contact recreation. As identified in the July 2015 public notice, WDEQ/WQD would need information sufficient to identify: (1) the location of the stream(s) (e.g., latitude and

longitude, object ID provided in the web map, etc.) and (2) the existing and potential recreational activities associated with the stream, given the physical condition of the stream. WDEQ/WQD would need additional detail regarding whether the streams are capable of supporting full body immersion or children have regular contact with the water equivalent to swimming. WDEQ/WQD recommends working with the department to provide sufficient information to demonstrate that the waters identified above support full body immersion or small children have regular contact with the water equivalent to swimming during the summer recreation season.

Carlin Girard, Water Resource Specialist, Teton Conservation District: The approved statewide model may provide a better representation of human use at a statewide scale; however, in the Teton Conservation District there are many small streams that receive extremely high levels of human use, which results in 'primary contact' due to volume of use, instead of stream character.

Below, I will provide examples of a few areas that should be classified as 'primary contact' due to unique recreational uses, which were not picked up in the Categorical UAA. For these examples, I am aware site specific UAA process can be used to request future recreational classification changes, however by sharing these examples at this time, I hope to save WDEQ and TCD time and energy.

[Inset A] There are roughly six stream sections that have been given 'secondary contact' criteria within the small drainages immediately southeast of the Town of Jackson. These tributaries are all located in very close proximity to Jackson's local trail system, which have remarkable heavy use. US Forest Service records show that 70-90 dogs use the Cache Creek trail a day, which is important because of the amount of human opportunity for contact with these streams, and because of the large amount of human and pet waste, which is at a point that the Forest Service has implemented closures and restrictions to limit water quality degradation. These streams should remain as 'primary contact.'

Department Response: The comment above does not provide sufficient information to designate waters for primary contact recreation. As identified in the July 2015 public notice, WDEQ/WQD would need information sufficient to identify the existing and potential recreational activities associated with the stream, given the physical condition of the stream. WDEQ/WQD would need additional detail regarding whether the streams are capable of supporting full body immersion or children have regular contact with the water equivalent to swimming. WDEQ/WQD recommends working with the department to provide sufficient information to demonstrate that the waters identified above support full body immersion or small children have regular contact with the water equivalent to swimming during the summer recreation season.

Carlin Girard, Water Resource Specialist, Teton Conservation District: [Inset B] The section of Spring Creek, which flows along Spring Gulch road should also be maintained as a 'primary contact' stream section. This is because its output flows directly through Teton Science School owned property, and is actually used as an outdoor classroom for many students on an annual basis. The high level of contact by school students in the stream section immediately downstream of the section not categorized as 'secondary contact' does not take into account the large amount of use by children, in a setting that is designed to give students a hands on experience of aquatic systems and science. This stream section should be maintained as 'primary contact.'

Department Response: Retention of primary contact designated use is not necessary to protect water quality of downstream waters. See Changes in Water Quality/Protection of Downstream Waters Summary Response for clarification on impacts of designated use changes to downstream waters.

Carlin Girard, Water Resource Specialist, Teton Conservation District: [Inset C] In the headwaters of Flat Creek, there are currently two stream sections that flow into Flat Creek Lake that are currently categorized as 'secondary contact.' This lake is used as a recreational guest ranch that has swimming boating and general aquatic recreation as a highlight of their services. As well, it is a popular recreation area for the public, who use it for the same set of aquatic recreational activities. These stream sections should remain as 'primary contact.'

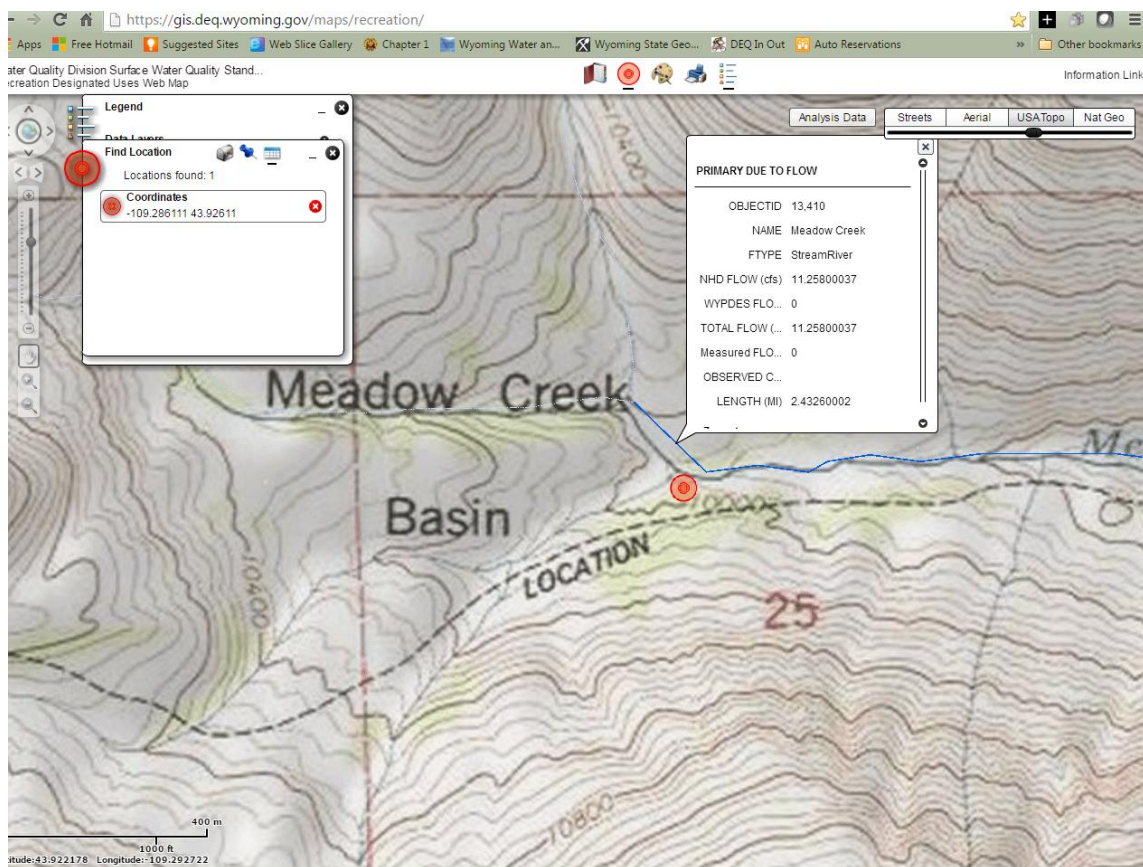
Department Response: Retention of primary contact designated use is not necessary to protect water quality of downstream waters. See Changes in Water Quality/Protection of Downstream Waters Summary Response for clarification on impacts of designated use changes on downstream waters.

Brian Connely, Casper, WY: I'm just representing myself, not an organization, and I'm just here to comment on the accuracy of the model for the UAA. It obviously is a GIS model. It has been ground-truthed in places, but I just - after a quick perusal of maps, I'd just like to give an example of three places that - this image is going to be hard for a lot of people - that I have fully immersed, right, fully immersed, and that are red on these maps, and it's a head scratcher for me. I get around the state a lot, a lot in the backcountry.

Area 1, it's on the Absaroka southeast map, Meadow Creek. And this - these coordinates are longitude, latitude. 45 degrees, 55 minutes, 34 - 34 seconds point 104, and that's latitude. Longitude, 109 degrees, 17 minutes, ten seconds point 506. That's the head of Meadow Creek.

Anybody going up Francs Peak, probably a lot of you - or some people here have gone up to the top of Francs Peak. You know that the obvious camp spot is the head of Meadow Creek. It's a 14-mile round trip to Francs Peak, and when you come back, there's a little drop-off, kind of a little natural shower, I guess. And I didn't discover this myself, I was just told about it, everybody sits in that thing and takes a shower.

Department Response: The location information given is in Montana. Looking at all the Meadow Creeks in Wyoming, WDEQ/WQD presumes the commenter meant 43 degrees latitude. Meadow Creek at that location has an estimated mean annual flow of approximately 11 cfs and was therefore not designated for secondary contact recreation in the Categorical UAA (see web map export, below).



Brian Connelly, Casper, WY: Willow Creek on Natrona County north map, and this is at 43 degrees, 24 minutes, 34 seconds point 463 latitude and 106 degrees, 47 minutes, 45 seconds point 732 degrees longitude.

In my job, we treat diffuse knapweed in the southern Bighorns, and we have several campers with up to 16 - well, say up to 19 people in those campers. And this is a known bathing spot on Willow Creek. This is where the crew bathes on those hot, dusty days.

Department Response: The comment does not provide sufficient information to designate the water for primary contact recreation. As identified in the July 2015 public notice, WDEQ/WQD would need information sufficient to identify the existing and potential recreational activities associated with the stream, given the physical condition of the stream. WDEQ/WQD would need additional detail regarding whether the stream is capable of supporting full body immersion or children have regular contact with the water equivalent to swimming. WDEQ/WQD recommends working with the department to provide sufficient information to demonstrate that the waters identified support full body immersion or small children have regular contact with the water equivalent to swimming during the summer recreation season.

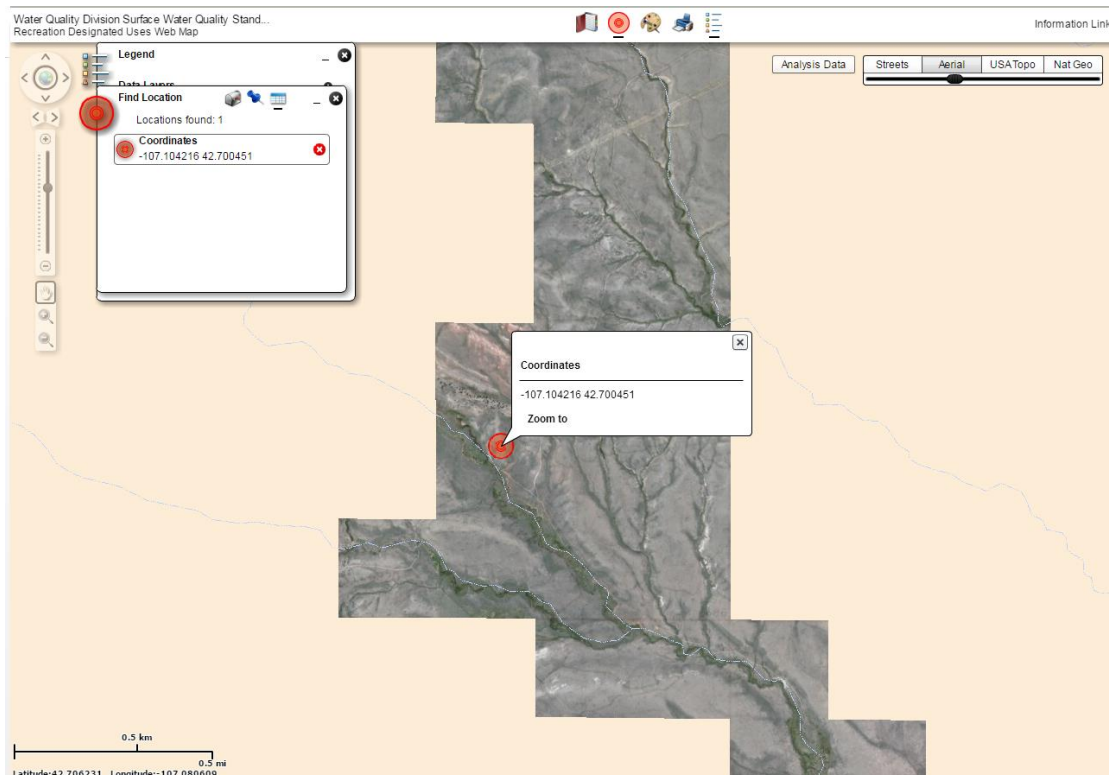
Brian Connelly, Casper, WY: And here is the biggest head scratcher, Horse Creek, Natrona County south map at 42 degrees, 42 minutes, one second point 624 latitude, 170 degrees, six minutes, 15 seconds point 179 longitude.

Horse Creek's a perennial spring. It's a warm spring. It's 51 to 54 degrees year-round. It doesn't freeze up by the springs. Talk about a swimming hole, that is a swimming hole. It comes out year-round at that temperature. It's one of the best small brown trout fisheries in the state.

And my comment is just that the maps provided and the designations look incomplete to me. It looks like there's a lot of streams that are red on those maps that I personally bathed in.

Department Response: The comment does not provide sufficient information to designate the water for primary contact recreation. As identified in the July 2015 public notice, WDEQ/WQD would need information sufficient to identify the existing and potential recreational activities associated with the stream, given the physical condition of the stream. WDEQ/WQD would need additional detail regarding whether the stream is capable of supporting full body immersion or children have regular contact with the water equivalent to swimming. WDEQ/WQD recommends working with the department to provide sufficient information to demonstrate that the waters identified support full body immersion or small children have regular contact with the water equivalent to swimming during the summer recreation season.

In addition, based on the location information provided, the warm spring is located on private land (see export from recreation designated uses web map, below – beige shaded areas are public lands). When collecting information regarding recreational uses of waters located on or accessed via private property, ensure that you have obtained permission from the property owner to both access the property and to collection information.



Dan Smitherman, Bondurant, WY: But on July the 31st of this year, at the head of Pine Creek in the Bridger Wilderness, I observed four young people, two under the ages of ten, play in the water for two full days. They were nine miles from the nearest trailhead.

There seems to be some GIS errors. Again, I have some examples. If you look at Cliff Creek in Sublette County from below the falls to the headwaters has been downgraded. I've guided hunters in there many times. I've watched them bathe, drink, wash their hands, do everything in that creek. Mountain bikers and hikers can access those falls, and like the falls, he mentioned they're more than happy to get underneath them and take a shower.

Kilgore Creek, which was downgraded for the entire length, is in the same situation. It's used a lot in the fall by hunters. I've guided hunters. I've watched them use that water, and there's plenty of places on that creek where you can get full body immersion, and the creeks that feed Kilgore, Jamb Creek, Grizzly Creek, are all the same way.

Another example is on the Soda Fork of the Buffalo. Every stream that feeds into that river was downgraded to secondary category, and I've seen primary contact on many of those, including myself. I've drank that water. I've washed my hands in that water. I've cooked with that water.

Like several other speakers before me have said, a lot of these low-flow streams, they pool, they have different flow rates, depending on what time of the year, but Kilgore and Wolf Creek, for example, in Sublette County, there's plenty of places that where you show degradation that even my body can be immersed.

Department Response: See Recreational Designated Uses and Water Quality Criteria Summary Response for clarification on primary contact recreation designated use. WDEQ/WQD's understanding is that some of the waters identified are Class 1 waters that have been withdrawn from the analysis.

The comment does not provide sufficient information to designate waters for primary contact recreation. As identified in the July 2015 public notice, WDEQ/WQD would need information sufficient to identify: (1) the location of the stream(s) (e.g., latitude and longitude, object ID provided in the web map, etc.) and (2) the existing and potential recreational activities associated with the stream, given the physical condition of the stream. WDEQ/WQD would need additional detail regarding whether the streams are capable of supporting full body immersion or children have regular contact with the water equivalent to swimming. WDEQ/WQD recommends working with the department to provide sufficient information to demonstrate that the waters identified support full body immersion or small children have regular contact with the water equivalent to swimming during the summer recreation season.

Ted Lapis, Public Land User Committee: Here is a stream that is currently classified as secondary use. It is extremely well used by people in Sheridan, although it's in Big Horn County. It's up near the Medicine Wheel and Paradise Valley, Paradise Falls.

These are some additional pictures of the stream in question, and it is a beautiful area, and it's a water slide, and there's no way that you use this water slide that you don't get immersed, and it is -- well, let's see. Johnson, Big Horn.

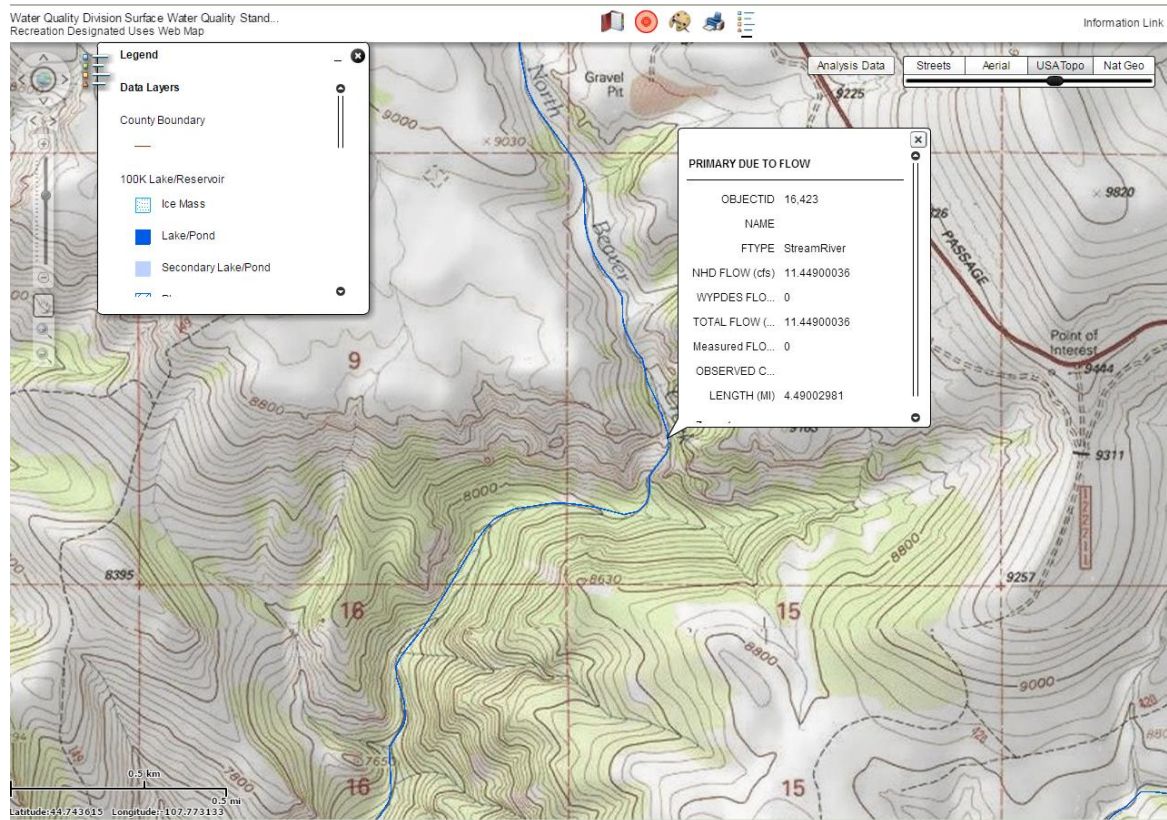
So this is actually near Bald Mountain, up by the Medicine Wheel, and across from Little Bald Mountain. It dumps into North Beaver Creek, but it's an area that is very beautiful, and I'm leery about how people are going to defend their favorite swimming holes in a public forum.

Ted Lapis, Public Land User Committee: Paradise Valley 44 45 34.61 N 107 47 55.09 W WGS 84 datum is a pristine swimming hole in the Bighorn Mountains with a rock slide that will cool you down in August, but will flush you over a rock precipice in June. It is NOT a place that forgives mistakes, but locals have enjoyed this remote area for generations, and kept it clean. Cross Hwy 14A from Little Bald Mt, Paradise Valley Rock Slide is a cool place for hot days.

Unfortunately, the Wyoming Department of Environmental Quality has decided to increase the amount of E. coli bacteria allowed in small streams (< 6 cubic feet/second on average) from a level where dunking your head is refreshing to a level 5x higher where immersing your head is unhealthy. The usual sources of E. coli in Wyoming streams on public lands are cow pies. The Wyoming DEQ caved in to grazing lease wishes for reduced costs by allowing more pollution.

This matters because Wyoming is a fence out state, so if there is no regulation to force ranchers to keep cows out of the streams, cows will poop in streams all summer, and the problem will get worse. The DEQ is holding a hearing in Casper, WY on September 16, 2015. If you would like a hearing in your area please write to David Waterstreet, Watershed Section Manager, Wyoming Department of Environmental Quality, 122 West 25th Street, Herschler Building 4-W, Cheyenne, WY 82002 or by fax 307-777-5973.

Department Response: North Beaver Creek, identified as the Paradise Valley Rock Slide in the comments above, has an estimated mean annual flow of approximately 11 cfs and was therefore not designated for secondary contact recreation in the Categorical UAA (see web map export, below).



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